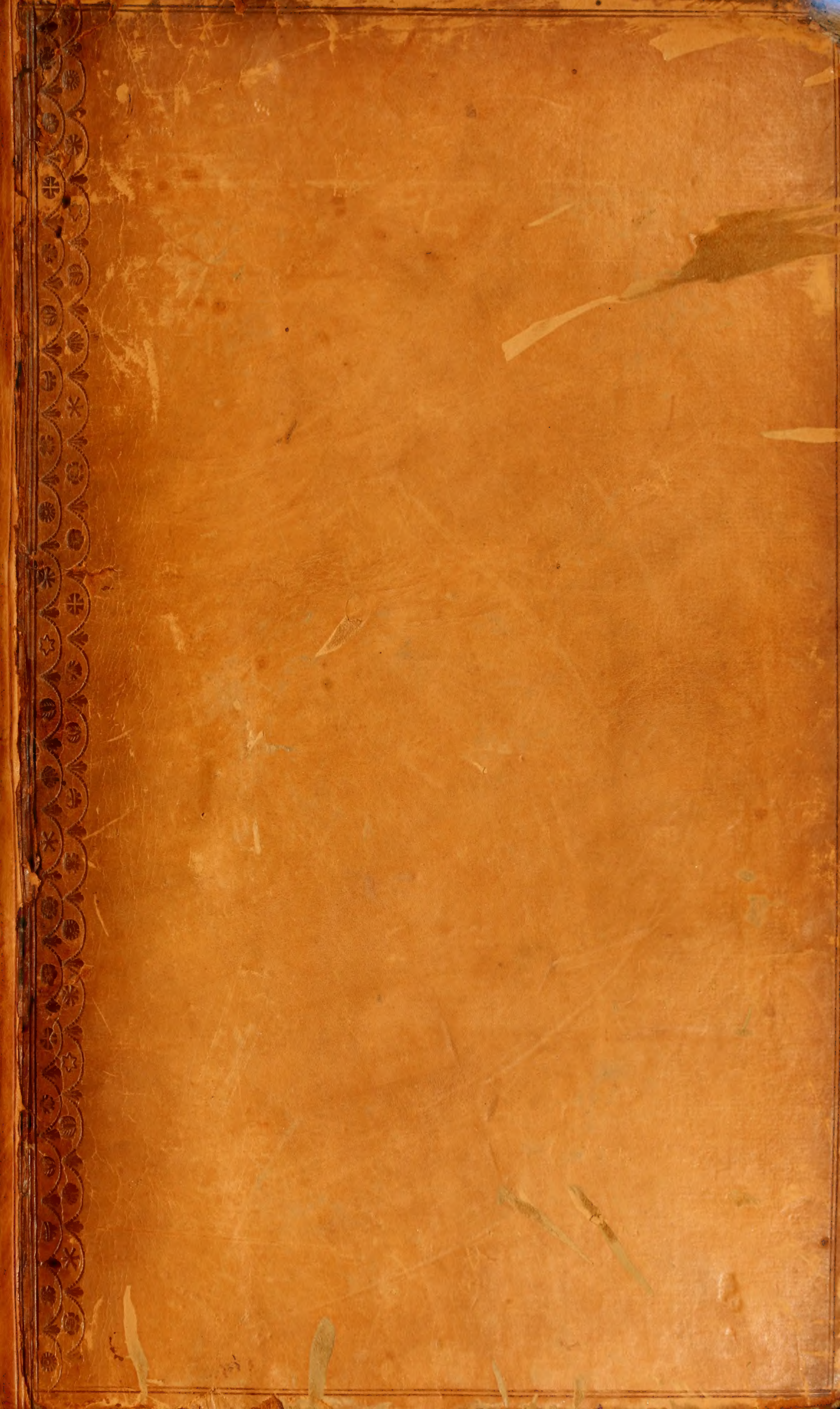




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Alphabetically digested under proper TITLES

WITH
NOTES and REFERENCES
to the WHOLE.

By CHARLES VINER, *Esq;*

Faucte Deo.

ALDERSHOT *in* Hampshire *near* Farnham *in* Surry :
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TO THE RIGHT HONOURABLE

Sir THOMAS PARKER, Knight,

Lord Chief Baron of the Court of
EXCHEQUER.

My LORD,

*S*ince I am prevented addressing this Part of my Work (as I intended) to your Lordship's Predecessor, the late Lord Chief Baron Probyn, as a Testimony of my Gratitude for the many Obligations I was under to him, and of which I shall always bear a Grateful Remembrance; It is with the greatest Pleasure, that I embrace this Opportunity of returning my Thanks to Your Lordship for the many Honours and Favours myself and my Work have received likewise from Your Lordship.

No Part thereof would probably have ever made its Appearance in Publick, had it not been for the great Encouragement Your Lordship gave me.

This

DEDICATION.

This, my Lord, has made me presume to address to Your Lordship this Part of that Work, so highly Honoured by Your Lordship's Approbation, and since by the Approbation of every Bench of Justice both in England and Ireland, (the greatest Honour that can be done to any Author, and the best Recommendation any Work of Law is capable of) that I might testify to the World in the most Publick Manner, that I am, with the greatest Veneration and Respect,

My LORD,

Your Lordship's

Most Oblig'd,

And Most Obedient Servant,

Charles Viner.

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Allowed, How.	G. 2		Cause thereof good.	B
By priority of a Suit. See (F) pl. 4.			At what Time a Man shall be said a dead	
In going and returning to and from Courts.			Person, or profess'd.	C
See (B) and (C)			Profit Appender.	
Ousted. See Covin.			Prohibition.	
Chancery, and Other Courts.	G		Antiquity thereof.	A
In what Cases.	H		Lies	
In what Actions.			Of what Things or Actions, and for what	
Of Officers of Courts, from Offices and Duties.	A		Causes, the Judges not having Juris-	
Of other Persons	A. 2		diction.	B
Prayed.			Defamation.	
At what Time, and what shall be an ad-	I		What Defamation.	N
mitting the Jurisdiction of a Court.	K		Legacies and Wills.	
Proceedings and Pleadings.			See (F) pl. 22. &c.	
Privy.			Jurisdiction Spiritual.	C
Of the several Sorts of Privies, and of what			Of what Thing.	F
they may take Advantage.	A		Ousted.	
Probate. See Will.			In what Cases.	
Procedendo. See Rege Inconsulto &c.			In respect of Collateral.	
Process.			Thing.	D
Judicial.			Cause.	L
How it ought to be made.	A		By what Plea.	E
Distringas.			Extent thereof.	
Upon Testatum at Common Law.	B		Seats in the Church.	G
25 E. 3. 17.			Reparations.	H
Capias and Exigent.	C		Chapel of Ease.	I
Awarded.			Ornaments.	K
What Process shall be awarded,	D		Where the Laws Spiritual and Temporal	
By whom.	E		differ.	
Execution.	F		In the	
At what Time.	G		Matter.	O
			Manner of Suit.	P

(M. a) * LEAGUE and TRUCE.

Fol 174. bis.

* The Difference between a League and a Truce is, That a Truce is a

1. **I**t is a Breach of a Truce for one Realm to banish the Commodities of the other Realm, there being a Truce between them.

Cessation from War for a certain Time, but a League is an absolute Striking of Peace. 4 Inst. 150. — A Truce is an Agreement, whereby, tho' the War continues, yet all Hostilities do for a While cease, for between War and Peace there is no Medium. It is but a bare Suspension of the Acts of War. 1 Molloy 153. cap. 9. S. 1.

† A League may be broken by levying of War, or by Ambassador or Herald. 4 Inst. 152. cap. 26. — And says, that Brian held Opinion in 10 E. 4. 6. b. That if all the Subjects of England would make War with a King in League with the King of England, without his Assent, that such a War is no Breach of the League. And in the Duke of Norfolk's Case, Hill. 14 Eliz. the Question was, Whether the Lord Fife, and other Subjects of the King of Scots, that without his Assent had wasted and burnt divers Towns in England, and proclaimed Enemies, were Enemies in Law, within the Statute of 25 E. 3. the League being between the King and the Scots; and resolved that they were Enemies. 4 Inst. 152. cap. 26.

Radcl. 36 Eliz. Henry de Uais and other Frenchmen imported divers Manufactures, as Cloth of Tissue, Cawles, Points &c. Whereupon Tomlinson and other good Merchants of London, exhibited divers Informations upon the Statute 19 H. 7. which prohibits the same; Of whom the Frenchmen complained at the Council Table. And it was resolved by the Lord Treasurer Burleigh and the whole Council, That it was no Breach of the League between this Kingdom and France; for that in the Articles of the League the Laws of either Kingdom are excepted; and therefore if Tomlinson the Subject being a French Merchant, should trade into France, he must observe the Laws and Customs of France. 4 Inst. 153. 154.

2. 27 H. 6. cap. 1. 28 H. 6. cap. 1. 4 E. 4. cap. 5. between the Duke of Burgundy and the King of England.

3. 1 Eliz. cap. 13. recites. That where by divers Statutes before it had been enacted, that no Subjects of the King of England should export or import any Merchandizes but in Ships of the King's Subjects &c. Since the making of which Statute other Foreign Princes finding themselves aggrieved with the said several Acts, as thinking that the same were made to the Hurt and Prejudice of their Country and Navy, have made like Penal Laws against such as should ship out of their Countries in any other Vessels than of their several Countries and Dominions; by Reason whereof, there hath not only grown great Displeasure betwixt the Foreign Princes and the Kings of this Realm, but also the Merchants have been foregrieved; for Remedy thereof be it enacted, That the Act of 5 R. 2. cap. 3. and 4 H. 7. cap. 3. shall be void &c.

4. Rot. Parl. 8 H. 5. M. 5. Where before Accord was made between the Kings of England and Flanders, that no Wools but of England should be sold in Flanders, and that no Cloths of England should be sold in Flanders, upon Pain of Forfeiture of them, which Ordinance of Cloths holds yet in Flanders, and yet there are brought the Wools of Scotland, Arragon and Catalonia, and Spain, the Commons pray Remedy. Answer, It shall be search'd in the Treasury of the King, and in other Places, if any such Alliance can be found.

5. Rot. Parl. 9 H. 5. M. 5. Pray the Commons, that where very great Plenty of Wools of Scotland, Catalonia and Spain is brought into Flanders, and there work'd more customably than usual, by which the Price of English Wools is lowered; please the King to make such Treaty and Request to the Duke of Burgundy, that the said Wools &c. be not there work'd, or otherwise that the Cloths made in England may be sold in Flanders as they are in Brabant, Holland, and other Countries adjacent. Answer, That he will speak that the Cloths of England may be sold there.

6. 2 D. 5. cap. 6. The Breach of Truce and Leagues made Treason. 29 D. 6. cap. 2. enlarged.

ing, Breaking of Truces and Safe-Conducts by any of the King's Liege People and Subjects within England, Ireland and Wales, or upon the Main Sea, was adjudged and determined to be High Treason. But this Branch concerning High Treason is repealed by Statute 20 H. 6. 11. But by the said Act of 2 H. 5. for the better Observation of Truces and Safe-Conducts, a *Conseiller Inductum*, &c. *Salvatorum Regis Conductum*, was raised and appointed in every Port of the Sea by Letters Patents. His Office was to enquire of all Offences done against the King's Truces and Safe-Conducts upon the Main Sea out of the Counties and out of the Liberties of the Cinque Ports, as Admirals of Custom were wont. 4 Inst. 152. cap. 20.

7. By Force of the Statute 27 E. 3. Statute-staple, cap. 13. The Chancellor alone without any Justice, has Power to relieve Merchants who are robbed upon the Sea. 2 R. 3. 2. Per all the Justices.

8. Speedy Remedy given to Strangers upon the Violation of Truce and Safe-Conduct. 31 H. 6. cap. 4. 14 E. 4. cap. 4. Where it is said that Offences against the Amities and Leagues &c. are to the great Slander of the King, and the universal Damage of all the Realm &c.

S. P. Arg 2 Show. 369 9. All Leagues or Safe-Conducts ought to be of Record, viz. *in-roll'd in Chancery*, to the End the Subject may know who are in Amity with the King, and who not. 4 Inst. 152.

10. In all Treaties, the Power of the one Party and the other ought to be equal. 4 Inst. 152.

11. There are four Kinds of Leagues, viz. 1. *Fœdus Pacis*. And a Christian Prince may have this with an Infidel. 2dly. *Fœdus Congratulationis sive Consolationis*, which may likewise be with an Infidel. 3dly. *Fœdus Commutationis mercium sive Commercii*; and this may likewise be with an Infidel. 4thly. *Fœdus Mutui Auxilii*; but this cannot be with an Infidel or Idolater. And as concerning these four Leagues, the Laws of England are grounded upon the Laws of God. 4 Inst. 155.

12. A League made between two Kings without naming of Successors, does not extend to Successors, tho' by our Law *Rex non intermoritur*. 4 Inst. 156. (d) cites 9 E. 4. 2. a.

S. C. Keb 514. pl. 94 says, That upon the Ambassador's Complaint to the Council, he submitted to pay all Duties, and now refused, and the Ambassador having gone without libelling in the Admiralty, the King's Counsel conceived it a Matter of State, and the King would send him into Portugal; and that the Court would not let him go [bail him] without sufficient Security to answer Information in the King's Court for cheating the King, in Regard the King of Portugal had made a gift of a dukedom to the Queen's Portion. Adjournatur. The King v. Juanicum Mayes.

14. Tho' there be no actual War, yet if there be no League, they may take up Arms and fight one another, for they are in *Statu Belli*. Arg. 2 Show. 369. in Case of East-India Company v. Sands.

15. If a League be broken, let the Subject's Right be what it will, it is gone; for on Breach of the League they become as Enemies. Arg. 2 Show. 370.

16. The Law vests the sole Power of making Leagues in the King alone. Arg. 2 Show. 369.

17. In

17. In all Leagues the *Municipal Laws of each Realm* are excepted.
Arg. 2 Show. 369.

For more of League and Truce See 1 Molloy, cap. 7 8. 9.

(N. a) *Letters of Marque and Reprizal.*

Fol 115 bis
See Admiralty — See Prizes.

1. **I**n the Register, fol. 129. there is a Writ to the Earl of Flanders to do Right to J. and upon Default of Right, a Writ for an Arrest here of the Goods and Body of him who did the Wrong, by taking or spoiling of the Goods of the English. F. N. 114. B.

2. 1 E. 1. Rot. Fin. Memb. 6. Rex Ballivis suis Novi Castri super T. Salut. &c. Because the Burgeses of the said Vill have received great Damage in Flanders, and because he would do Justice, he commands them quod bona & mercimonia Flanders de ceteris in Portu Villæ vestræ predictæ inventa arrestari faciatis ita quod, the Burgeses shall have the third Part of the said Goods for their Damage, and the other two Parts they shall keep donec aliud a Nobis receperitis in Mandat.

3. 28 E. 1. Rot. Pat. M. 13. Bernardus Civis Baion. deprædat. de Bonis ad Valent. 7000 l. in Portugal habuit Licenc. per Jo. de Britania Lieutenant de Aquitaine quod ipse Gents de Regno Portugal, & eorum bona ubicunque infra District. nostrum contigerit secundum Legem Mercatoriam marcare retinere & appropriare possit quousque eidem Restitutio facta fuerit ; which Letters of Marque the King confirmed.

If any Person shall be killed, wounded, or any ways damaged in a hostile Manner, in the Territories or

Places of any King or Potentate, to whom Letters of Remeist are transmitted, and no Satisfaction shall be made to the Person injured, there is no Compuition to resort to the ordinary Prosecution, but Letters of Reprisal shall be issued. But where Misfortunes happen to Persons or their Goods, residing in a foreign Country in Time of War, Reprisals are not to be granted ; in this Case they must be contented to sit down under the Loss, for they are at their Liberty to relinquish the Place on the Approach of the Enemy, when they foresee the Country is subject to Spoil and Devastation ; and if they continue, they must partake of the Common Calamity. Gen. Treat. of Trade 213. 214.

4. 17 E. 1. Rot. Fin. Memb. 3. De Bonis & Mercimoniis Civium Burd. arrestandis ob transgressionem Regi factas &c.

5. 22 E. 1. Rot. Fin. Memb. 3. De Bonis Mercatorum de Regno & potestate Regis Franciæ in Hibern. invent. arrestand. & vendend. for Cause of the War &c.

6. 29 E. 1. Rot. Fin. Memb. 12. Arrest of Goods of Merchants de Provence, for having stay'd in London ultra 40 Dies contra Libertates &c. See pl 12.

7. 33 E. 3. Rot. Fin. Memb. 8. De Bonis mercatorum &c. arrestandis &c.

8. 14 E. 2. lib. Parl. 91. Some Ships of Calais arrested here for Robbery done to the English, and delivered upon the Letter of the King of France to have it respited ; and upon Petition to the King by the English Merchants, it is answered, That the Letters shall be seen, and the Answer of the King to them ; and if the Time of Respite be pass'd, then let the Chancellor do to the Merchants that which Reason and Law will.

9. Rot. Pat. 27 E. 1. Memb. 5. Licence to D. of Spain to come into England with Merchandizes &c. Proletas quod occasione cuiusdam arreste, quod vocatur le Marque, quod nuper fieri concessimus pro hominibus Ducatus nostri Aquitanie occasione.

10. 27 E. 3. cap. 17. Stat. 2. Provided always that if our Liege People, Merchants or other, be indamaged by any Lords of strange Land, or their Subjects, and the said Lords, (duly required,) fail of Right to our said Subjects, we shall have the Law of Marque and of taking them again, as hath been used in Times past, without Fraud or Deceit; and if Debate arise between us and other Lords &c. the People and Merchants of such Lords shall not be presently subdued, but shall have * 40 Days after Proclamation, or more, if Need be, to depart the Land, as appears by the Statute more largely.

* Sept 6

Letters of
Reprizal
were granted
1007 before

* Feb. 176
Bis.

these Statutes
by the Kings
of England,
by Virtue of
their Pre-
rogatives, nor
was the
King's Pre-
rogative in
the least di-
minish'd by
them, but

remained at Common Law. Gen. Treatise of Trade &c. 212 — And this Statute does in no Respect restrain the King's Prerogative and Authority which he had at the Common Law, in judging the Convenience and Time when to be executed. Molloy 30. cap. 2. § 9.

* Orig. is
(Janvoies)
Prynne's
Abr. of
Cotton's Records

12. Rot. Parl. 2. H. 5. 1 Part. R. 34. Letters of Marque against the Merchants of * Jeane confirmed, and how the Prizes brought in shall be ordered.

Prynne's
Cott. Rec.
Abr 546.
Nº. 27. The
Answer was,
That the
Officers of

13. Rot. Parl. 3. H. 5. 1 Part. R. 27. An Impolition put upon Cloths by the City of Bayon; and for this prays Remedy by Reprizal here to the double upon theirs, [to be] taken here, if they do not reform it. But it is not enacted. Vide accordingly 3 H. 5. 2. Part of the last Petition.

Bayon shall be driven to shew the Causes, whereupon Redress shall be made.

14. A Merchant of England shall not have any Writ of Reprizal for Debt due to him by Merchant Stranger upon Contract made beyond Sea, if the Merchant Stranger comes into England, or his Goods. F. R. 114. b. *Tamen quere.*

Expired.

15. 10 H. 6. cap. 3. It was complained that the Goods of divers of the Subjects of England were taken by the King of Denmark and his Lieges, being in Amity of the King, whereof they have not any Remedy of the said King nor any other, in as much as none of them come to England, or have nothing there; and therefore it is enacted that the Keeper of the Privy-Seal for the Time being, shall have Power to make to the Party grieved, Letters of Request under the Privy Seal, without any other Pursuit to be made to any for Restitution to be had of the Goods so taken and to be taken; And if Restitution be not made by such Letters, the King, by the Advice of his Council, shall provide to the Party grieved his Convenable Remedy according as the Case requireth.

Expired.

16. 20 H. 6. cap. 3. A Kind of Reprizal in Wales.

17. In the Prosecution of Letters of Marque and Reprizal, there must be 1st. The Oath of the Party injured, or other sufficient Proof touching the pretended Injury, and of the certain Loss and Damage thereby sustained. 2^{dly}. A Proof of the due Prosecution for the obtaining of Satisfaction in a legal Way. 3^{dly}. A Delaying or Denial of Justice. 4^{thly}. A Complaint to his own Prince or State. 5^{thly}. Requisition of Justice by him or them, made to the Supreme Head or State, where Justice in the ordinary Court was denied. 6^{thly}. Persistency still in the Denial of Justice. All which being done, Letters of Reprizal under such Cautions, Restrictions and Limitations as are consonant to Law, and as the special Case may require, may issue not only by the Jus Gentium & Civile, but by the Ancient and Municipal Laws of the Kingdom. Molloy 28. cap. 2. S. 6.

S. P. And then the Prince of that Country against whom the same are awarded, must repair the Damage out of his or their Effects who committed the Injuries, or if that proves deficient, it

ought to fall as a Common Debt on his Country. 2 Gen. Treat. of Com. 210. cap. 10.

18. Reprizals granted by the Laws of England are of two Sorts, Ordinary and Extraordinary. The Ordinary are either within the Realm or without, and are always granted where any English Merchants or their Goods are spoiled or taken from them in Parts beyond the Sea by Merchant Strangers, and cannot upon Suit or the King's demanding Justice for him, obtain the same; he shall have, upon Testimony of such Prosecution, a Writ out of the Chancery to arrest the Merchant Strangers of that Nation, [or] their Goods here in England; the which is grantable to the Subject oppress'd, of Common Right, by the Chancellor or Keeper of England, who always in such Case hath the Approbation of the King or Council, or both, for his so doing. The other, which is for Satisfaction out of the Realm, is always under the Great Seal. Molloy 28. cap. 2. S. 7.

2 Gen. Treat. of Trade 210 &c. S. P.

19. The Extraordinary are by Letters of Marque for Reparation at Sea, or any Place out of the Realm, grantable by the Secretaries of State, with the like Approbation of the King or Council, or both; but they are only during the King's Pleasure, and to weaken the Enemy during the Time of War, and may at any Time be revoked. Molloy 31. cap. 2. S. 10.

2 Gen. Treat. of Trade 211. &c. S. P.

20. A. had Letters of Reprizal granted to him by the King for a great Sum of Money, and therein was a Clause, That no Treaty of Peace should prejudice them. The King by several Treaties of Peace with the Dutch, had expressly artickled, That they should not be prejudiced by these Letters Patents. Lord Chancellor refused to let the Point be argued, and said that nothing could be said for it, and that the Case was very proper in Chancery for the repealing these Letters Patents; for tho' the Bar was not so well apprized of it, the Chancery had Admiralty Jurisdiction by the Statute 31 H. 6. N^o. 66. or 68. which was never printed. And in Proof that a Treaty of Peace may revoke and amortize Letters of Reprizal, his Lordship said that the same may be done by a Truce, or by Letters of Safe-Conduct; and as to this last Point cited * 11 H. 4. Rot. 66. and a Judgment of the like Nature given in the Parliament of France, and the like in the Parliament of England † 2 H. 5. N^o. 34. And for Authority that a Truce had like Effect upon Letter of Reprizal, he cited the Roll of Parliament 10 H. 6. N^o. 34. where the Danes, after a Truce made with them, had seized English Ships by Colour of Letters of Reprizal, there being no Provision made against them in the Truce, and the Parliament there petitioned the King for Letters of Marque against the Danes. Vern. 54. Patch. 1692. The King v. Carew.

* Prynn's Cott. Rec. Abr. N^o. 66. is, That John Cowley of Bridgewater prayeth, that he may take Letters of Marque and Privy Seal of all Frenchmen's Goods, having no Safe-Conduct of the King, to a certain Value, for certain his Ships and other Goods taken by the French in Time of Truce. The

Answer was, That upon his Suit to the King, he shall have such Letters of Marque as are needful; and if the French refuse to do him Right, the King will then show his Right.

† Prynn's Cott. Rec. Abr. 541. N^o. 34. Den. Borelme and others of London pray, That the Letters of Marque or Reprizal granted by the King, and the Colour of the same, may be con-

formed. *Answer*, That which the King granteth, and thereby provideth for the safe Keeping and well Ordering of the said Goods.

21. Some Englishmen having fitted out a Privateer got a Commission by *Letter of Marque from the Duke of Savoy*, and took a French Ship in which were several *Turks* and *Tripolins*. It was sentenced in the Admiralty, that the Capture was not good in respect of such Commission, and also because the *Tripolins* being in Peace with England, their Goods were not to be seized by English Ships or Men. 2 Vern. 592. Mich. 1707. *Walton v. Hanbury*.

Carth. 599. 22. By the Admiralty Law, the Property of a Ship taken without *Let-*
Hill 8 W. 5. *ters of Marque vests in the King upon the taking*; and this upon the High
B. R. S. C. Sea. Resolved per tot. Cur. 12 Mod. 135. Trin. 9 W. 3. B. R. in
Case of the King v. Brown.

(O. a) Contempts.

See (P. a.)
See ———

Tenure by
Homage is
taken away
by the Sta-
tute of 12
Car. 2. cap.
— 4 S. 1

1. **I**nquisition apud Lanceson 6 E. 1. In the Exchequer. A. qui loquitur pro Rege saith, that Dominus Rex ratione Regie dignitatis & Corone sue habet Privilege quod Nullus in regno suo de aliquo qui sit de Regno Anglie alicui Homagium sive fidelitatem alicui facere debeat vel aliquis hujusmodi Homagium, vel Fidel. ab aliquo recipere debeat nisi facta mentione de Fidel. Domino Regi debita eidem Domino Regi Fidelit. observand. Episcopus Eron has done Contrarium &c. In Contemptum &c. And the Bishop put to answer; and refused; and upon this was condemned &c.

2. Et ibidem Comes Cornub. complains of the Bishop of Eron for excommunicating of the Men of the Vill of Ethe for taking his Duty due for the Passage over the River of Ethe of the Passengers, which he has had Time out of Mind &c.

3. Rot. Parl. 17 E. 3. M. 26. Richard Heiron late of London Merchant, being a Liege-man of our King, and born in England, sued John Walden Mayor of the Staple of Calais and other Merchants of the Staple, and caused them to be arrested in Flanders in the Court of the Duke of Burgundy held in Bruges, for certain Injuries supposed by him to be done within the Jurisdiction of the King of England at Calais; and after the * Defendants appealed to the Parliament of Paris, where they were dismissed by Sentence judicial, because the Suits were grounded upon Matters supposed to be done in Places within the Jurisdiction of the King of England, and the Parties Plaintiffs and Defendants were Subjects to the same King of England, and after the same Plaintiff sues them again in a Foreign Court; and therefore upon all this Matter shewn, it is enacted that a Writ of Proclamation shall issue, commanding him to surcease his said Actions, and that if he hereafter sues the said Defendants out of the Realm of England, for any Matter determinable under the Obedience of the King of England, or where he has Jurisdiction, then he shall be put out of the King's Protection, and shall forfeit all his Lands and Tenements, Goods and Chattels, and that no Pardon shall be available to him.

4. The Refusing to be examined before a Committee of Council is a great Contempt. 12 Rep. 94. The Countess of Shrewsbury's Case.

* See Indict-
ment (B)
(C) (D) —
And see

5. As to this Head of Contempts, so far as it concerns this Title of Prerogative, Mr. Serjeant Hawkins divides it into four Parts. 1. Contempts * against his Palace or Courts of Justice. 2dly. Against his Prerogative.

Prerogative of the King.

gative. 3dly. Against his $\frac{1}{2}$ Person or Government. 4thly. Contempts, Sailing, is against || his Title. Hawk. Pl. C. 56. cap. 21.

C. 59. cap. 22. divides this into three Parts, viz. 1. Refusing to do the King for the People's Good 2dly. Preferring the Interest of a Foreign Prince to that of our own. 3dly. Disobeying the King's lawful Commands or Prohibitions

|| Ibid. 60. cap. 23. All Contempts against the King's Person or Government are 200. Years Criminal, and punishable with Fine and Imprisonment, and sometimes with the Pillory, by the Direction of the Judges, upon Consideration of all the Circumstances of the Case: but inasmuch as it is generally obvious to Common Sense, in what Cases, and to what Degree a Man is guilty of this Offence, and it would be endless to enumerate all the Particulars, the Sergeant says he shall content himself with glancing at some of the most general Heads; which the Reader may see there.

|| The Sergeant divides this into two Kinds, viz. 1. *Denying his Title.* 2dly. *Refusing to take the Oaths required by Law for the Support of his Government.* Hawk. Pl. C. 61. cap. 24. In which said several Chapters the Reader may see the said several Matters more fully treated of and explained

(P. a) * *Præmunire at the Common Law.*

1. **H.** 24. E. 3. B. R. Rot. 13. The King misit hic 4 literas suas diversis Clericis suis dimorantibus apud Romanam quamplurima fecerunt ibid. in Derogationem Corone Regie præcipiendi quod visis literis suis immediate testinarent in Angliam, & præsentent se coram Concilio Regis responsur. ad ea que ex parte Regis obijcerentur &c. And Roger Holme, for not coming according to the Command, committitur Marshchal. and after to the Tower of London, & quod omnia bona quam Spiritualia tam Temporalia in manus Regis capiuntur &c. Postea pardonatur. (It seems this was a Præmunire, for he had not any Lands.)

and against the Usurpers upon them, as by diverse Acts of Parliament appears. But in Truth it is so called from a Word in the Writ; for the Words of the Writ be, Præmunire facias præfatum A. L. &c. quod tunc sit Coram nobis &c. where *Præmunire* is used for *Præmonere*, and so do diverse Interpreters of the Civil and Canon Law use it; for they are Præmoniti that are Præmoniti. Co. Litt. 129. b

*Some hold an Opinion that this Writ is called a Præmunire, because it doth touch the Jurisdiction of the Crown, of the Kingly Laws of the Crown, against Foreign Jurisdiction.

2. 29 E. 3. B. R. Rot. 19. The Bishop of Hereford indicted in a Præmunire for excommunicating all, qui in Folcis, Parcis, Chaceis & Warrenis suis apud Malvern & alibi in Diocesi sua iugaverunt & fecerunt de Bosers suis ac Lepores, Cunculos & Phasianos de Waren. suis ceperunt, generatiter per totam Diocesim suam fulminavit contra Jus Regni &c. and found Guilty by Jury, but advised of the Judgment. (It seems that this Indictment was not upon any Statute, for it seems 27 E. 3. does not extend to it, not being done to the King, nor after Judgment at the Common Law.

Offences against the Peace; and that the Exemption of the Clergy from the Secular Jurisdiction is not founded upon the Law of God: The Promoter and Abettors of the Suit incur a Præmunire, and so do the Judges of the Spiritual Court who retain the Cause; by all the Judges of England. Jenk. 198. pl. 10. cites 7. H. 8.

3. Rot. Parl. 20. E. 3. R. 41. 42. The Commons pray that if any bring the Bull or Letter of the Pope, touching the Business of Alien Bishops, Abbots &c. that he be out of the Law. Answer, We forbid, that none bring Letters of Aliens from over the Sea into the Realm, if he does not shew them to the Chancellor or the Warden of the Ports, upon Pain of 500 l. Forfeiture to the King.

and the King would have had him drawn and hanged; but the Chancellor and Treasurer fell upon their Knees for him before the King, by which he forejured the Realm only. And so see the Punishment thereof before any Statute of Præmunire, quod nota bene. Br. Præmunire, pl. 13. cites 30. Ed. 19.

4. At the Common Law before the Statute 5 H. 7. cap. 1. it was no Felony for a Man attainted of Præmunire; for he was out of the King's Protection.

He who brought Writ of Excommunication into England in the Time of E. 1. forfeited the Realm.

Ple.

§ P. Hawk. Protection, and every Man might do with him as with an Enemy of
Pl. C. 55 the King. Jenk. 199. pl. 17. cites 24 H. 8.
cap. 19. § 26
—S. P. Co.
Lit. 151. b

(P. a. 2) Premunire by Statute.

1. **A** Trachment upon a Prohibition was brought by the King and the Incumbent, for that the King had presented the Incumbent to a Benefice, and the other Defendant brought Bulls from Rome in Disturbance thereof, contra formam Statuti &c. And the Defendant confess'd it; by which the Court awarded that the Defendant shall go to perpetual Prison, and that the Plaintiff recover his Damages, as he has counted; and the Court would not tax the Damages in this Case. And so it seems that this Action was brought by the Incumbent qui tam pro Domino Rege quam pro seipso sequitur. Br. Præmunire, pl. 7. cites 21 E. 3. 40.

The Usurpations of the Bishops of Rome were the Cause of making this and all other Statutes of Premunire. Arg. Mod. 60.—Before the making of this Statute there were three great Mischiefs. 1. That the King's Subjects have been drawn

2. 27 E. 3. Stat. 1. cap. 1. Whereas divers People are drawn out of the Realm to answer Things, the Cognizance whereof belongeth to the King's Court, and the Judgments given in the King's Court are impeached in another Court, in Prejudice and Dishonour of the King, his Crown and People, and to the Destruction of the Common Law of this Realm, it is assented and accorded by the King, the great Men and Commons, that whosoever shall draw any out of the Realm in Plea whereof the Cognizance belongeth to the King's Court, or in Matters where Judgment hath been given in the King's Court, And whosoever shall sue in any * other Court, to defeat or impeach the Judgments given in the King's Court, shall be summoned to appear before the King and his † Council, or in his Chancery &c. to answer such Contempt within two Months; and if they shall not ‡ appear in Person at the Day, to be at the Law, they shall be put || out of the King's Protection, with their ¶ Procurators, Attornies, Executors, Notaries and Maintainers, and their ** Lands, Goods and Chattels forfeited to the King, and their †† Bodies be imprisoned and ransomed at the King's Will; and if they cannot be found, they shall be outlawed.

out of the Realm to answer Things whereof the Cognizance belonged to the King's Court. 2. Of Things whereof Judgments have been given in the King's Courts. 3. That after Judgments given in the King's Courts of Common Law, of Matters determinable by the Common Law, Suits were commenced in other Courts within this Realm, to defeat or impeach those Judgments. And these three Mischiefs had three unsufferable Effects. 1. The Prejudice and Dishonour of the King and of his Crown. 2. The Dishonour of all his Subjects. And 3. The Undoing and Destruction of the Common Law of this Realm. All which appears in the Preamble of this Act. 3 Inst. 120.

* They are called (other Courts) either because they proceed by the Rules of other Laws, as by the Canon or Civil Law &c. or by other Trials than the Common Law doth warrant; for the Trial warranted by the Law of England, for Matters of Fact, is by Verdict of twelve Men before the Judges of the Common Law, of Matters pertaining to the Common Law, and not upon Examination of Witnesses in any Court of Equity; so as *Alia Curia* is either that which is governed per *Aliam Legem*, or which draweth the Party Ad aliud Examen: For if the Freehold and Inheritances, Goods and Chattels, Debt and Duties when in the King or Subject hath Right or Property by Common Law, should be judged per *Aliam Legem*, or be drawn Ad aliud Examen, the three Mischiefs aforesaid, express'd in the Preamble and in this Act, should follow, viz. Dishonour of the King and his Crown, the Dishonour of all his People, and the Undoing and Destruction of the Common Law at all Times used: By which Words of the Act it appeareth, that all these Mischiefs were against the ancient Common Laws at all Times used. 3 Inst. 120.

† Here Council cannot be taken, as most commonly it is, for his Judges of his Courts of Justice, who are said to be of his Council for Proceedings in Course of Justice, because the Courts of Justice are hereafter in this Act named; neither doth it intend the King's Privy Council, but the King and the Lords of Parliament in Parliament, which is a Court of Justice. 3 Inst. 125.

‡ Premunire against an Abbot who was a Lord of Parliament; and therefore he prayed to be by Attorney, and could not, because the Statute is contrary; but by special Writ out of Chancery he may. Br. Attorney, pl. 48. cites 15 H. 7. 9. —So of the Praying to be received, this may be by Special Writ out of the Chancery. Ibid.

|| By these Words the Persons arraigned in a Writ of Premunire are disabled to take any *Alia Remedia* by the King's Law, or the King's Writs; for the Law and the King's Writs are the Things whereby a Man is protected and aided, so as he, that is out of the King's Protection, is out of the Pro-

tection and Aid of the Law. 3 Inst. 126. — S. P. And no one, knowing him Guilty, can with Safety give him Aid, Comfort and Relief. Hawk. Pl. C. 55. cap. 19. S. 47.

¶ Note, by this Act the *Procurers, Attornies, Executors, Notaries and Maintainers* shall have the same Punishment that the Principal shall have. 3 Inst. 125.

** See (P. a. 6) — This is a new Kind of Forfeiture given by this Act, and is penal, and cannot by Equity extend further than the Records; and therefore this Act extendeth not to the Forfeiture of Fairs, Markets, Rent-charges, Rent-sock, Warren, Annuities, or any other Hereditament that is not within the Word [Lands.] 3 Inst. 126

†† The Greatness of the Punishment shews the Greatness of the Offence. 3 Inst. 126.

Provided, that if they come in before they be Outlawed, and yield themselves to Prison to be justified by the Law, and submit to the Judgment of the Court, they shall be received.

3. If a Man leases his Vicarage for Life rendering Rent, and sues in the Ecclesiastical Court for the Rent, Premunire lies; by which he tendered other Issue; for now the Rent reserved is a Lay Thing. Br. Premunire, pl. 5. cites 44 E. 3. 36.

4. 16 R. 2. cap. 5. Enacts that * if any purchase or prosecute, or cause to be purchased or prosecuted in the † Court of Rome or elsewhere, ‡ any Thing which toucheth the King, against him, his Crown and his Regality, or his Realm, they, their || Notaries, Procurators, Maintainers, Abettors, Fautors and Counsellors, shall be put out of the King's Protection &c.

* These Words extend to all Persons of what Quality or Sex soever. 3 Inst. 126.

† These Words extend to all Courts of what Jurisdiction soever, and whether holden by Right or Wrong. 3 Inst. 126. — It is intended in the Bishop's Court; and therefore if a Man be Excommunicated for a Thing which belongs to the Common Law, Premunire lies. Br. Premunire, pl. 12 cites 5 E.

4. 6. — It has been said that Suits in the Admiralty or Ecclesiastical Courts within the Realm are within this Statute by Force of these Words (Or elsewhere) if they concern Matters, the Conscience whereof belongs to the Common Law; As where a Bishop deprives an Incumbent of a Donative, or excommunicates a Man for Hunting in his Parks &c. or where Commissioners of Sewers imprison a Man for not releasing a Judgment at Law. Hawk. Pl. C. 51. cap. 19. S. 18. — But it seems that a Suit in those Courts for a Matter which appears not by the Libel it self, but only by the Defendant's Plea, or other Matter subsequent, to be of Temporal Conscience, (as where a Plaintiff libels for Tithes, and the Defendant pleads that they were severed from the nine Parts, by which they became a Lay Fee) is not within the Statute, because it appears not that either the Plaintiff or the Judge knew that they were severed. Hawk. Pl. C. 51. cap. 19. S. 19. — See (P. a. 7).

‡ These Words extend to All Things whatsoever, and are as general as can be. 3 Inst. 126.

|| This Act extends not only to Procurers, Abettors, Maintainers, Counsellors &c. which are known Words in Law, but to Favourers (Fautores) which Word was largely extended in the Time of H. 8. whereby it is to be observed how dangerous it is to bring new Words into an Act of Parliament, especially into such as be so penn'd; for there it appears that Cliff, being a Parson of a Church, granted to the Cardinal an Annuity so long as he should be Legate, Ut decensius & sublimius se gereret in Autoritate sua Legantina, which the Cardinal had by Bull, and paid to him 10 Marks in Name of Seisin; and he was adjudged a Fautor. 3 Inst. 126. cites Mich. 21 H. 3. Cliff's Case.

5. The refusing to elect or consecrate the Person nominated by the King to a Bishoprick is made a Premunire by 25 H. 8. cap. 28. Hawk. Pl. C. 52. cap. 19. S. 22.

6. The exercising the Jurisdiction of a Suffragan without the Appointment of the Bishop of the Diocese, is made Premunire by 26 H. 8. cap. 14. Hawk. Pl. C. 52. cap. 19. S. 21.

7. 5 Eliz. cap. 1. Enacts that if any Subject of this Realm, after the 1st of April 1563. shall by Writing, Cyphering, Printing, Preaching or Teaching, Deed or Act, advisedly and wittingly hold, or stand with to extol, set forth, maintain or defend the Authority, Jurisdiction or Power claimed or usurped by the Bishop or See of Rome within this Realm, or wittingly attribute any such Jurisdiction, Authority or Prebeminence to the said Bishop or See of Rome, such Offenders, their Abettors, Procurers and Counsellors, Aiders, Assiliers and Comforters, being indicted or presented within one Year after such Offence, and convicted or attainted at any Time after, shall incur a Premunire.

Till this Statute any one might have tried a Person accused of Premunire. Jenk. 199. pl. 17. cites 21 H. 8. Br. Cases 53 — Per Coke Ch. J. 2 Bull. 299.

12 Rep. 38. the Case of Premunire. — The Statutes 27 E. 3. 1. 16 R. 2. 5. &c. of Premunire are yet in Force, and all such Proceedings by Colour of Ecclesiastical Law, before any Ecclesiastical Judges

who were in Danger of Premunire before this Act of 1 Eliz. are now in Case of Premunire after the said Act; but before Commissioners by Force of High Commission, or before Bishops or other Ecclesiastical Judges; for the said Acts of Premunire are not repealed by this Act. Resolved. 12 Rep. 37. Case of Premunire.

8. The 5 Eliz. cap. 1. Prohibits Books to be published or printed, or uttered within the Kingdom, which *maintain the Supremacy of the Pope* within the King's Dominions. The Approvers of such Books are within the said Statute, and the Danger of it, viz. Premunire. By all the Judges of England. Jenk. 235. pl. 12. cites 11 Eliz. Dyer 282.

9. A. was indicted upon the Statute of 1 Eliz. cap. 1. for *aiding B. knowing him to be a principal Maintainer of the Authority of the See of Rome*, (the Offender in such Case is liable by the said Statute to the Forfeiture of Premunire. There are other Offences mentioned in the said Statute, with other Penalties;) this Offence in the said Statute has the Words, (*Upon Purpose and to the Intent to exert the Power of that See*;) these Words were omitted in the said Indictment, for which Cause the said Indictment was judged insufficient by all the Judges of England; for these Words make the Offence as to the Forfeiture of Premunire. Jenk. 243. pl. 27. cites 20 Eliz. D. 363.

10. The contributing to the Relief of a Popish Seminary is made a Premunire by 27 Eliz. 2. Par. 6. Hawk. Pl. C. 52. cap. 19. S. 26.

11. 16 Car. 1. cap. 21. Enacts, that if any Person shall put in Execution any Letters Patents, Proclamation &c. whereby the Importation of Gunpowder, Saltpetre, Brimstone, or other Minerals for the making of Gunpowder, shall be any ways prohibited or restrained, he shall incur a Premunire.

1 Vent. 171.
S. C. by
Name of the
King v
Green & al

12. Green and others were indicted for *refusing the Oath of Allegiance* contained in the Act 3 Jac. cap. 4. and being convicted, judgment of Premunire was given against them according to the Directions of the said Statute. Raym. 212. Mich. 23 Car. 2. B. R. Green's Case.

(P. a. 3) Premunire. Notes. And for whom it lies.

S. P. Hawk. Pl. C. 388. cap. 37. S. 26. 1. Premunire is but a Contempt; and a Pardon of all Contempts pardons it. 12 Rep. 92. Pasch. 10 Jac. in Lord Vaux's Case.

By the Statute 27 E. 3. it appears that a Premunire lies as well for the Party as for the King, and they both may join in one Writ. 5 Inst. 125. — Br. Action Popular, pl. 9. cites S. C. 2. The King shall have Premunire, and the Party grieved by the Suit of the Provision may have Action. Per Littleton. Quære what Action he shall have; it seems Action upon the Case; but none can have Premunire but the King, as it seems. Quære. Br. Premunire, pl. 13. cites 7 E. 4. 2.

3. The Bishop of Durham has Jura Regalia there, and therefore may hold Plea of Premunire; quære, for it is given by Statute, and there was no such Suit at Common Law. Br. Premunire, pl. 15. cites 14 H. 4. 14. and 9 E. 4. 2.

Serjeant
Hawkins
says it has
been ques-
tioned, whe-
ther a Man
attainted of
Premunire
has a Right
to Surety of
the Peace, or
not. Hawk.
Pl. C. 126. cap.
60. S. 3.

4. A Man attainted in a Premunire is disabled to bring any Action; for he is extra Legem positus, and is accounted in Law Civiliter mortuus. Co. Litt. 130. a.

5. Upon

5. Upon an Indictment of Premunire, a *Peer* of the Realm shall not be tried by his Peers. 12 Rep. 92. Lord Vaux's Case.

(P. a. 4) Premunire. In what Cases it lies, or a Prohibition.

1. **S**OME hold that a Benefice donative by the Patron only is a *Liberty* And in this Thing, and the Bishop shall not seize, and therefore shall not de- Case was price; and then if he meddles in it, he is in the Case of Premunire. Br. *Barlow, Premunire, pl. 21. cites 8 Aff. 29. 12 Rep. of Bath in the Time of E.

6. and was compell'd to obtain a Pardon, inasmuch as he had deprived the Dean of Wells, which was a Donative by Letters Patents of the King, by Act of Parliament therefore made. But S. E. 3. above is not adjudged. Ibid.——* S. C. cited 3 Inst. 122.

2. Prohibition lies always where Premunire does not lie; as of *Tithes* But where of great Trees, or for *Tithes* of the seventh Part Prohibition lies, and not it is a Lay- Premunire; for the Nature of the Action belongs to the Spiritual Court, p. 16, or of a but not the Cause in this Form. Br. Premunire, pl. 16. cites 24 H. 8. which never belonged to the Spiritual Court, Premunire lies thereof; as of *Debt* against him upon a *Simple Contract*, or for Breach of Faith upon a Promise to pay 10 l. by such a Day. Br. Premunire, pl. 16. cites 24 H. 8. and Doct. & Stud. lib. 2. cap. 24.

3. Saint Germin in his Book of Doctor and Student, who wrote after 26 H. 8. holdeth, That if a Man makes a *Promise* for a *temporal Thing*, and swears to perform it, and does it not, if he be sued for Perjury in the Spiritual Court, a Prohibition or a Premunire lies in that Case. Also he says, if a Man be *excommunicate* in the Spiritual Court for *Trespasses*, or such other Thing as belongs to the King's Crown and his Royal Dignity &c. the Party, if he will, may have a Premunire fac. against him. 3 Inst. 122.

4. In all Cases, when the Cause originally belongs to the Cognizance of the Ecclesiastical Court, and the Suit is prosecuted in the same Nature, But the the Cause may originally belong to the Ecclesiastical Court, yet if he sues for it in the Nature of a Suit which doth not belong to that Court, but to the Common Law, a Premunire lies; as if a Mortuary be de- as the Cognizance belongs to them (tho' in Truth the Cause, all Circumstances being disclosed, belongs to the Court of the King, and to be determined by the Common Law) yet no Premunire lies in that Case, but a Prohibition; as if *Tithes* severed from the nine Parts, are carried away, if the Patron sues for the Subtraction of these Tithes in the Spiritual Court, this is not in the Case of Premunire; for it may be that the Plaintiff did not know of the Severance, nor that they were carried away, nor may the Ecclesiastical Judge know it; and tho' the Defendant pleads this, yet the Ecclesiastical Court may proceed to try the Truth of it without Danger. And so in Case of *Mortuaries*, tho' the Wood perhaps may be above 20 Years Growth. 12 Rep. 39. the Case of Premunire.

livered to the Parson, and after the Party retakes it, if the Parson sue for this as a Mortuary to himself, he is in Case of Premunire. But after the Retaking, if he sues for it as a Mortuary not executed in Nature of a Suit which belongs to the Ecclesiastical Court, upon the Truth of the Case there is Cause of Prohibition, and no Premunire lies: So if he sues for *Tithes* of Wood above 20 Years Growth, so that it appears by the Title that the Cause does not belong to the Ecclesiastical Court, the Premunire lies; But if the Suit be *Pro Sylva Cædua* &c. so that as the Suit is framed, the Cognizance belongs to the Ecclesiastical Court, tho' the Truth be otherwise, a Prohibition lies, and no Premunire. 12 Rep. 39. Case of Premunire.——For when the Cause originally belongs to the Ecclesiastical Court, tho' it holds Plea of any Incident to it, which belongs to the Common Law, a Prohibition lies, and not a Premunire. 12 Rep. 39. 40. Case of Premunire

5. When

5. When the *Cause originally belongs to the Cognizance of the Common Law and not to the Ecclesiastical Court*, there, *tho' they libel for it according to the Course of the Ecclesiastical Law*, yet the Premunire lies, because it draws the Cause *Ad aliud Examen*, and so deprives the Subject of the Benefit of the Common Law, which is his Birth-right. 12 Rep. 40. Case of Premunire.

Sid 463.
S. C. Mod.
59 to 61.
S. C. Ad-
journalur.

6. Action upon the Statute 27 E. 3. of Premunire, and declared that Patch. 18 Car. 2. he recovered 200 l. Debt against the Defendant in B. R. and that after the Defendant exhibited his Bill in Chancery, and obtained a Decree for the Vacating of the Judgment. The Defendant demurr'd. This Case depended from Trin. 20 to Trin. 22 Car. 2. when Hale Ch. J. held, that this Case was not within the Statute, and so he said it appeared by the Petition upon which the Statute was founded. And no more was done thereupon. Lev. 24 to 243. Trin. 20 & 22 Car. 2. B. R. King v. Standish.

See Amercement. (C. a)

(P. a. 5) Premunire. Proceedings, Pleadings and Judgment.

* See pl. 9. 1. **I**N Premunire, the Defendant appeared by * Attorney, and because and in Notis he did not come in Person, he was condemned, and the Sheriff there — returned the Writ, prout Breve exigat &c. † and did not make Mention that † S. P. For he warned him by two Months according to the Statutes, and yet well; it shall be quod nota. Br. Premunire, pl. 18. cites 39 E. 3. 7. intended that it is well

served according to Law; for other Writs ought to be served 15 Days before the Return, and yet no Mention thereof is in the Return; and if the Sheriff does not warn him, or serve the Writ as he ought, if the Party be damnified, he may have Writ of Disceit. Br. Return de Brief, pl. 56. cites S. C.

Br. Premunire, pl. 2. cites 42 E. 3. 7. Contra, That where the Sheriff returned the Defendant warned and returned no Day; and therefore ill, because by the Statute they shall be warned two Months before the Day of the Return, which cannot be counted where no Day of Garnishment is returned, for which Reason Sicut alias issued. Br. Return de Brief, pl. 103. cites S. C.

If the Defendant come not at the Day &c. by the express Letter of the Law Judgment shall be given against him, according to the Act 2; E. 3. 3 Inst. 125.

And there it was admitted, that the Judgment by their Default, that they shall be out of the King's Protection, is no Attainder; for Thorp Ch. J. said it is only a Pain given by the Statute, that if they do not come the first Day they shall be out of the Protection of the King, and their Lands and Chattels forfeited: But this is no Attainder, for Capias shall issue against them; and if they do not appear at the Capias, Exigent shall issue; and so the Statute proves that they have Answer; for otherwise it shall be in vain to award Process; quod nota. Ibid.

3. Premunire against divers, some as Principal and some as Accessories; and at the Day of Return the Principal did not come, by which they were out of the Protection of the King, and their Lands and Chattels forfeited; and the Plaintiff prayed that the Accessories who appeared should answer: But per Fencote, they shall not answer till the Principal be attainted. Br. Premunire, pl. 4. cites 44 E. 3. 7.

4. And several admitted there, that there may be Principal and Accessary in Premunire; but Candish said that if he who is called Principal dies, yet the other shall answer: Contra in Felony; but Finch said that it is more like to Trespass than to Felony; for in Trespass he who first comes shall answer, and if he be convicted of Damages, and after another comes and pleads, and is convicted, he shall be charged of the first Damages:

Damages; and if he be acquitted, yet the first shall be charged; and the Writ was that such *Manutenentes & Abettatores ipsum expulerunt*: And after Finch awarded, that the Defendants who appeared should answer; and so it seems that all are Principals. Br. Premunire, pl. 4. cites 44 E. 3. 7.

5. Premunire by an Abbot against two; the one made Default, and was put out of Protection of the King, and his Goods and Chattels forfeited; and this at the first Day as it seems. Rolfe defended the Tort and Force, and demanded Judgment if the Court would take Consuance; for he said that the Abbot Plaintiff was deposed at C. in the County of Chester, where this Court has no Jurisdiction. Chauntrell said, this goes to the Action. Per Strange, At least it goes to the Writ, but if you agree to the Issue, it shall be tried where the Writ is brought, by the Statute &c. of 9 E. 3. cap. 4. as it seems. And after Rolfe pass'd over, and pleaded Excommunication. Brooke makes a Quære, if the foreign Plea above shall be tried where the Writ is brought, where it goes to the Writ; for the Statute mentions where it is pleaded in Bar. Br. Premunire, pl. 8. cites 8 H. 6. 3.

6. Bill of Premunire for the King was brought against J. N. in B. R. and he pleaded to the Bill, because the Statute is that such Suit shall be by Bill before the King and his Council, or by Premunire, which Bill before the King and his Council, is intended before him and his Lords, and not before him in his Bench; and Premunire is intended by Writ Original, and not by Bill in B. R. wherefore Plaintiff made Bill of Premunire against him in Custody of the Marshal, and then he was committed to answer. Br. Premunire, pl. 1. cites 27 H. 6. 5.

Br. Bill. pl. 1. cites S. C. — But in Anno 22 H. 8. it was common that several Clerks were compell'd to answer to the Bills of

Premunire in B. R. who were not in Custody of the Marshal; quod nota. Bill.

7. Premunire against three, one as Procurator, another as Counsellor, and the third as Attorney; the Damages shall be severed. Per three Justices. Br. Premunire, pl. 17. cites 36 H. 6. 29.

The Defendant may deny, whether he will make them

all Principals, or the one Principal and the others Accessories; but the Damages shall be severally paid 3 Inst. 125.

8. Premunire against four; two appeared and two not; and the Writ was abated for Default therein; and therefore no Judgment was given against the two who made Default, inasmuch as the Writ was ill and abated. Br. Premunire, pl. 11. cites 5 E. 4. 6.

9. In Premunire the Defendant appeared, and took Exception; and the Court for divers Considerations permitted him to make Attorney. Br. Attorney, pl. 53. cites 9 E. 4. 2.

A Man shall not make Attorney in Premunire, unless in special

Case. Br. Attorney, pl. 82. — S. P. Br. Attorney, pl. 104. cites 39 E. 3. 7. — Defendant cannot appear by Attorney, but in Person in this Suit, tho' he be a Lord of Parliament, unless by special Writ of the Chancery. Br. Premunire, pl. 15. cites 15 H. 7. 9. — S. P. And this by the Statute 35 E. 3. cap. 2. 3 Inst. 125. — S. P. Whether the Defendant be a Peer or Commoner. It is said indeed in Roll's Reports, That Sir Anthony Mildmay was suffered to plead a Pardon to a Premunire by Attorney, and no Mention is made of any such Writ or Grant; but Sergeant Hawkins says he presumes there was a Clause to this Effect in the Pardon. 2 Hawk. Pl. C. 273. cap. 26. S. 53.

10. In Premunire a Man may have Process by Proclamation only, and may have Exigent if he will. Br. Process, pl. 80. cites 9 E. 4. 2.

11. A Man brought * Bill against J. N. in Custody of the Marshal, and counted upon the Premunire, that he had sued the Plaintiff in the Arches for Goods of J. N. and had appealed to Rome; and it lies well by Bill without Original; for this is to give him Day in Court, and when he is in Custody of the Marshal he is always in Court; quod nota per Cur.

Br Parliament, pl. 94. cites S. C. — In Action in Exchequer, pl. 37.

cites S. C. — But where the Statute gives the Process or Form of the Original, there
 * This Suit need not be against them in the Spiritual Court as Executor of J. S. to have the Will proved, where the Plaintiff claimed also to be Executor by another Will, and had Citation thereof, *abique hoc* that he is guilty in other Manner. And per Husley and Fairfax, This is no Plea, and therefore nothing shall be entered but Not Guilty; for the Plea does not answer any Thing to the Suit of the Goods. And to see that *Not Guilty* is a good Plea in this Action, and that *Executors cannot sue for the Goods of the Testator in the Spiritual Court*, but at Common Law. Br. Premunire, pl. 12. cites 2 R. 3. 17.

End of the giving of the two Months was, that they should have Notice, which is satisfied; and therewith agrees the Precedens; and the Defendant cannot be sued in any other Court when they are in Custodia Marchalli. See the Statute of 18 Eliz. cap. 5. but that Statute extends to common Informers, and not when the Suit is commenced by the Party grieved. 3 Inst. 125. — *But if the Defendant appears and pleads, and the Issue be found against him, or if he demur in Law &c. Judgment shall be given against him, that he shall be out of Protection &c.* And so has the Statute 27 E. 3. been interpreted; and Judgment given accordingly. 3 Inst. 125.

S. P. If he be in Prison; but if the Defendant be condemned upon his Default in not appearing, whether at the Suit of the King or the Party, the same Judgment shall be given as to the being out of the King's Protection, and the Forfeiture; but instead of the Clause that the Body shall remain in Prison, there shall be an Award of a Capiatur. 2 Hawk. Pl. C. 445. cap. 48 S. 9.

3 Le. 139. 13. The Attorney-General prosecuted a Premunire for the Queen pl. 189. and P. against Doctor M. and others, because they procured the said Mich. 25 P. to be *sued in the City of Oxford before the Commissary there in an Action of Trespass by Libel according to the Ecclesiastical Law, in which Suit P. pleaded Son Frankenement*, and so to the Jurisdiction of the Court, and yet they proceeded, and P. was condemned and imprisoned. And after that Suit depended, the Queen's Attorney withdrew the Suit for the Queen; and it was moved if, notwithstanding that, the Party grieved might proceed. But it was held by the whole Court, That if the King's Attorney will not further prosecute, the Party grieved cannot maintain this Suit; for the principal Matter in the Premunire is the Conviction, and the putting of the Party out of the Protection of the King, and the Damages are but accessory, and then the Principal being released the Damages are gone. Le. 292. pl. 399. Mich. 26 & 27 Eliz. B. R. The Queen v. The Dean of Christchurch.

14. The King brought a Prohibition against the Prior of W. that where the King had recovered in *Quare Impedit*, the Defendant sent his Frere to Rome with an Appeal, and sued there to avoid the Judgment, according to the Statute of Premunire. And upon Not Guilty pleaded, all this was found against the Defendant; and Judgment was prayed for the King upon the Statute of 27 E. 3. c. 1. in Case of Premunire; and it was adjudged that he shall not have it, because the Judgment ought to be conformable to the Original, and this Suit was not taken according to the Statute, but by a Writ of Prohibition at the Common Law. 9 Rep. 74. a. Trin. 9 Jac. in Doctor Husley's Case, cited as 30 E. 3. 11. b. The King v. the Prior of Woburne.

The Reporter adds, Nota, for the same Fault such a Judgment in Premunire against one
 15. Error to reverse a Judgment in Premunire given by the Justices of Assize and Gaol-Delivery in the County of Somerset against Perin, for refusing to take the Oath of Obedience mentioned in the Statute 3 Jac. cap. 3. Perin pleaded Not Guilty to the Indictment, and the Issue was joined between him and the Clerk of Assizes, and the Award of the Venire facias was certified upon the Record thus, viz. *Super obo precept. fuit*

Vic. Com. Somers. præd. quod Tenere faciat &c. where it ought to be *Præcept. est*, and not *Præceptum fuit*, in the Preterperfect Tense; for it is rather a History of a Matter which was acted before the Issue joined, than the Record of the Court of an Act done by the Court in Presenti, which always ought to be recorded in the Present Tense; and for this Error the Judgment was reversed, and the Party restored. 2 Sand. 393. Mich. 23 Car. 2. The King v. Perin.

16. The Defendants were indicted for *refusing the Oaths of Obedience* enjoined by 3 Jac. cap. 4. And the Indictment was, *That at the Assizes and General Gaol-Delivery held before Sir R. A. &c. and Z. B. Gent. videlicet R. A. and T. L. hæc vice Assisat. per Sacramentum suum &c. præsentit. existit modo sequen. viz. Jur. præsentant quod*, at the General Quarter-Sessions for the County of Hereford 14 January Anno 30. *the Justices of Peace did tender the said Oath to the Defendants, and they refused; and afterwards ad Assisas tent. pro Com. Hereford præd. apud Hereford prædict. in Com. Hereford præd. 31 Martii 31 Car. 2. Coram Roberto Atkins Milite Balnei un Justic. dicti Domini Regis de Banco, & Z. B. Gen. eidem R. A. & T. L. Mil. un. Baron. Scaccarii dicti Domini Regis ad Assisas in Com. Hereford præd. capiend. assign. per formam Statut. the said Justices A. and Z. B. again tendered the said Oath, and they refused to take the same. And upon Not Guilty pleaded, the Defendants Relicta Verificatione confess the Judgment; and Judgment was given against them: And upon a Writ of Error, the Error assign'd was, that the second Tender of the Oath was by the Justices of Assise only; whereas the Statute 3 Jac. says it must be by Justices of Assise and Gaol-Delivery; and this seemed not to be allowed by Dolben, but by the other two it was not spoke to; but Raymond conceived 'twas Error, and that the Justices of Assise cannot by Virtue of that Commission barely tender the said Oath; for the Statute says, that in Case they refuse to take the said Oath tender'd them by the Justices of Peace, then the said Justices shall and may commit the same Persons to the Common Gaol, there to remain without Bail or Mainprize until the next Assises, when the said Oath shall be again in the said open Assises required of them by the said Justices of Assise and Gaol-Delivery in their open Assises; and every Person so refusing shall incur the Danger and Penalty of a Premunire, by which it appears that they being committed to Gaol by Judgment of the Justices of Peace, none can deliver them but they who have Power to deliver the Gaol; and tho' the Statute de Finibus 27 E. 1. gives Justices of Assise Power to deliver the Gaol, that is intended only of Felons, as appears by Staunf. Pl. Cor. 57 & 58. But the Judgment was reversed for an incurable Error, which was the misreciting of the Oath contained in the Act. Raym. 374. 375. Trin. 32 Car. 2. B. R. The King v. Mounson.*

Præcept. est
Præceptum fuit
1511. S. P.
Vint. 172.
Mich. 23 Car.
2. B. R. The
King v.
Green & al.

(P. a. 6) Premunire. Forfeiture of what, and by whom.

1. **P**remunire against several upon the Statute 27 E. 3. cap. 1. They were found Guilty, the one as Principal and the others as Accessories, and the Damages were severed; And per Hals, there may be Principal and Accessory in Premunire, and he would have severed the Damages; but Gascoyne saw the Record, which supposed that they were Coadjutors, Procurors and Abettors to him who made the Bull, by which it was awarded that they recover Damages in common; and the Attorney of the King prayed that they may forfeit their Land and Chattels, because they were attainted as above. Gascoyne said the Statute does not will that he shall forfeit his Land &c. unless for Contumacy, for making Default at the Day of the Premunire returned and sued, by which

* Br. Forfeitures de Tenre, pl. 12. cites 8 H. 4. and 34 H. 4. 6. which &c. * But see, that there are other Statutes in the Time of R. 2. that they shall forfeit Lands and Chattels, if they are attainted, but not by the Statute 27 E. 3. quod nota. Br. Premunire, pl. 6. cites 8 H. 4. 6.

S. P. And these are Lands which he had at the Time of the Act done, and after, if it be upon Verdict, as by Feoffory or Treason. Br. Premunire, pl. 22. cites 8 H. 4. 7. per Garcoigne

Br. Premunire, pl. 19. 2. Richard Fermor of London was attainted in a Premunire in the Time of H. 8. and his Lands were forfeited *in Fee*, and not only for Term of Life; quod nota. Br. Forfeiture de Tenres, pl. 101. cites and so see, 34 H. 8. that it is not only a Forfeiture for Term of Life, as in an Attaint; for the one is by Statute, and the other is by Common Law — But if *Tenant in Tail* is attainted in a Premunire, he shall forfeit the Land but *during his Life*; for albeit the Statute of 16 R. 2. cap. 5. enacts, That their Lands and Tenements, Goods and Chattels shall be forfeit to the King, that must be understood of such an Estate as he may lawfully forfeit, and that is during his own Life. And these general Words do not take away the Force of the Statute de *Donis Conditionalibus*; but he shall forfeit all his Fee-simple Lands, Estates for Life, Goods and Chattels. And so it was resolved in * *Trudgim's Case*. Co. Litt. 139. a. — S. P. But the 26 H. 8. has the Words, *All Manner of Inheritance to be forfeited*: The Offence is greater within the 26 H. 8. and the Words more peremptory than in the other. Jenk. 28. in pl. 21. — * S. C. cited, as resolved by all the Judges of England. Pasch. 21 Eliz. 11 Rep. 63. b. in Dr Foster's Case. — 3 Inst. 126. cites S. C. — Serjeant Hawkins says it is agreed, That the Statutes of Premunire, which give a general Forfeiture of all the Lands and Tenements of the Offender, extend not to Lands in Tail. 2 Hawk. Pl. C. 454. cap. 49. S. 23.

3. He, that procures one to sue in the Court Christian, shall forfeit as much as he that sueth, and is Principal as well as the other, and is in equal Degree of Premunire; but if they both be indicted, the one of the Act and the other of the Procurement, and he that is charged with the Procurement is found Guilty, and the other by another Inquest is found Not Guilty, Judgment shall never be given against him who was indicted of the Procurement, because he cannot be an Offender but in Respect of the Offence of the other. 3 Inst. 125. 126.

Cro. C. 172. S. C. 4. One Trugion was seised in Fee of Lands, and so seised was indicted of Premunire, and before his Trial he gave them in Tail; and afterwards he was attainted of Premunire, and an Office under the Seal of the Exchequer found it; and Queen Elizabeth under the Great Seal granted them to G. C. and this Grant by the Queen was within the Time of the Purview of the Statute of 18 Eliz. for Confirmation of Grants of the King: and the Question was, *Whether the Attainder in the Premunire shall avoid a Grant made by the Party, Mesne between the Indictment and the Trial*, and Judgment thereupon. And this was argued several Times; but it being a great Point of Doubt and Consequence, the Justices did not give any Opinion or Resolution. But it was resolved that the Grant was not good at the Common Law; because upon the Attainder the Estate of Franktenement was not divested, and vested in the Queen till an Office thereof found, and the Office ought to be an Office to intitle, and not to inform the Queen of the Particulars of the Land; and therefore inasmuch as it was by Commission under the Seal of the Exchequer, and not the Great Seal, therefore the said Office was insufficient to intitle the Queen, as it is resolved in *Page's Case*. 5 Co. Jo. 217. Mich. 5 Car. B. R. Groffe v. Gayne.

(P. a. 7) Premunire. Suing in other Courts. *What shall be said to be Other Courts.*

1. AFTER Judgment given before Roger Loveday and Walter Winborn, Justices of Oyer and Terminer, against Walter Bishop

shop of Exeter and his Tenants, the said Bishop procured the Bishop of Landan in the Parish Churches of Cornwall and Devonshire, to pronounce Sentence of *Excommunication* by Sentence of the Archbishop of Canterbury, (which Sentence was had by the Procurement of the said Bishop of Exeter) *against all Persons of what Estate, Degree or Dignity soever, that dealt in the Proceedings &c. against the Bishop and his Tenants before the said Justices.* And in this Part of the Record, being in French, it is said, *La Corone & la Dignity nostre Seignieur le Roy ne doit per autre estre Justice ne guyne &c. Et les choses que sont passées en la court per judgment, ou en autre manner ne devient estre en autri court recuees &c.* Out of this Record Lord Coke says we may observe three Things. 1st. What the *Ancient Law* of this Realm was *before the making the Act 27 E. 3.* 2dly. That (En autri court) which are the Words of this Act, was taken to be *another Court within the Realm.* 3dly. That the Mischief before this Act was for Suits in other Courts within this Realm *after Judgment given in the King's Courts.* 3 Inst. 123. cites 6 E. 1. The Earl of Cornwall's Case.

2. J. W. exhibited a Bill of Premunire against W. P. upon the Statute of 16 R. 2. for *suing in the Admiral Court before John Earl of Huntingdon, Admiral of England, for a Cause which belonged to the Common Law, whereunto the Defendant pleaded Not Guilty.* 3 Inst. 121. cites Mich. 9 H. 7. coram Rege.

So R. B. and T. P. and others were charged with the Offence of Premunire, be-

cause they sued J. C. before Henry Duke of Exeter Admiral of England, for taking away a Chest of Gold, and other Goods, supposing the same to be taken *super altum Mare, where in Truth they were taken at Stafford* in the County of Essex, and the Statute of 16 R. 2. was recited, That none should sue in Curia Romana seu Alibi &c. and that the Consuance of this Plea belonged to the Common Law, and not to the Court of the Admiral. And so it is of the Constable and Marshal; if they hold Plea of a Matter determinable by the Common Law. 3 Inst. 121. cites 38 H. 6. coram Rege.

3. A Suit in the Ecclesiastical Court within the Realm for a Temporal Cause was a Cause of Premunire. 3 Inst. 120. cites it as adjudged by the whole Court, Mich. 11 H. 7.

4. In Rast. pl. 429. b. and 430. there is a Precedent of a Premunire for suing in the Ecclesiastical Court for Debt. 3 Inst. 121.

5. It was resolved, That he that sued in the Ecclesiastical Court for the Forgery of a last Will and Testament, incur'd the Danger of a Premunire; because the Party grieved might have his Remedy by the Common Law. 3 Inst. 121. cites 17 H. 7.

6. And in the same Year of 17 H. 7. Justice Spilman also reports, that one Turberville, as well for the King as himself, sued a Premunire against a Parson, for suing for Tithes in the Ecclesiastical Court, *alleging the same to be severed from the nine Parts*; and Judgment given against the Defendant. 3 Inst. 121.

The Bishop of Bangor was attainted in a Premunire for holding Plea of an Advowson.

and of Tithes sever'd from the nine Parts. 3 Inst. 122. cites Trin. 36 H. 8. coram Rege. Rot. 9. The Bishop of Bangor's Case.

7. And the Reason of all these Cases is, *because they draw Matters triable by the Common Law ad aliud examen*, and to be discuss'd per aliam Legem. 3 Inst. 121.

8. But some have made a Question, whether, *since the Ecclesiastical Jurisdiction was acknowledged to be in the Crown*, an Ecclesiastical Judge holding Plea of temporal Matter belonging to the Common Law incurs the Danger of a Premunire? Tho' hereof there is no Question at all, yet lest any Man might be led into an Error in a Case so dangerous, we will clear this Point by Reason, Precedent and Authority; the Reason holdeth still, to draw the Matter Ad aliud examen &c. and the like Question might be made for the Admiral Court, which is and ever was the King's Court, but governed per aliam Legem; and so likewise of the Court of the Constable and Marshal. 3 Inst. 121.

9. The Bishop of Norwich was attainted in a Premunire at the King's Suit, and his Case was this. Within the Town of Thetford there then was a Custom, *That all Ecclesiastical Causes arising within the said Town should be determined before the Dean there, having a peculiar Ecclesiastical Jurisdiction, and that no Inhabitant of the same Town should be drawn before any other Ecclesiastical Judge, and that every Person suing contrary to that Custom, the same being presented before the Mayor of Thetford, should forfeit 6 s. 8 d. and that an Inhabitant of Thetford, for an Ecclesiastical Cause arising in Thetford, sued another before the Bishop of Norwich within his Consistory Court at Norwich; and this was presented before the Mayor of Thetford, according to the Custom, whereby he forfeited 6 s. 8 d. The said Bishop cited the said Mayor for taking the said Presentment, Pro salute anime, to appear before him at his House at Hoxton in Suffolk, where the Mayor appeared, and the Bishop ore tenus injoin'd, upon Pain of Excommunication, to annul the said Presentment before a Day. And for this Offence he was attainted in a Premunire, upon his Confession before Fitzjames Ch. J. and the Court of King's Bench, upon the Statute of 16 R. 2. the Record whereof Lord Coke says he has seen. By which Judgment two Points are cleared.*

1. That the Statute of Premunire extends to Ecclesiastical Courts within the Realm. 2dly. That after the King was in Possession of his Supremacy the Bishops incurr'd the Danger of Premunire. 3 Inst. 121. cites 25 H. 8. coram Rege, the Bishop of Norwich's Case.

10. A Writ of Premunire upon the Statute of 27 E. 3. for *suing before the President and Council in Wales after Judgment given in the Court of Common Pleas in an Action of Debt for 42 l. 10 s. in Subversione Legum Antiquarum &c.* 3 Inst. 124. cites Trin. 21 Eliz. C. B. Rot. 319. Beans v. Loyd.

11. T. S. Parson of N. brought a Writ of Premunire against R. T. upon the Statute of 27 E. 3. for *suing in the Court of Audience of the Archbishop of Canterbury, to impeach a Judgment given in a Quare Impedit before the Justices of Assize in the County of Suffolk &c.* The Defendant pleaded Not Guilty &c. 3 Inst. 122. cites Trin. 29 Eliz. C. B. Thomas Stoughton's Case.

12. An Information upon the Statute 27 E. 3. against Sir Anthony Mildmay, for that he and other Commissioners of Sewers did impeach a Judgment in the King's Bench. He purchased a Pardon from the King, and pleaded it. 3 Inst. 125. cites Hill. 12 Jac. coram Rege.

S. P. Hawk.
Pl. C. 51.
cap. 19.
S. 16.

(P. a. 8) * *Pardon.* The several Kinds of Pardons, and the Difference.

*The Power of pardoning all Offences is an inseparable Incident to the Crown and its Royal Power; 'tis as much for the Good of the People that the King should pardon, as that he should punish. Per Holt Ch. J. Show. 284. Mich. 3 W. & M. in Case of The King v. Parson. — 2 L. P. R. 269. Tit. Pardon, cites S. C. — † See (U. a. 12).

1. **A**LL Pardons are either General or Special, and are either by Act of Parliament, (whereof the Court in some Cases shall take Notice) or by Charter of the King (which must always be pleaded). And these again are either absolute, or under Condition, Exception or Qualification; for some of those Pardons last mentioned the Party may have a † Writ of Allowance, or take an Averment in certain Cases; in others the Party may be aided by Averment only, where no Writ of Allowance doth lie. 3 Inst. 233.

2. A Special Pardon shall be taken for the Advantage of the King, because it comes at the Suit of the Party; but a General Pardon shall be taken

taken more for the *Benefit of the Party*, because this proceeds from the King himself, and of his Special Grace, & ex mero motu. Adjudged. Latch. 22. in Bolton's Case.

3. Per Jones and Dodderidge Justices, A *Coronation Pardon* is but in Nature of a *Particular Pardon*, and differs from a General Pardon in that, where no certain Time is specified as to the Offences, it shall not discharge any previous Offences for which Judgment has been given, but a general Pardon shall. Latch. 141. Davy's Case.

4. A *Coronation Pardon* is no Pardon till sued out, and is not like a General Pardon. Per Doderidge J. Latch. 141. Davy's Case.

(P. a. 9) Pardon. *In what Cases not necessary; and in what grantable of Course.*

1. Stat. Gloucester, ENACTS that in Case it be found by the Country, that a Person tried for the Death of a Man, did it in his Defence, or by Misfortune, then by the Report of the Justices to the King, the King shall take him to his Grace if it please him.

Where a Man is indicted of the Death of a Man, and it be found up-

on the Arraignment that it was done *Se Defendendo*, upon a Certificate of this Indictment and Arraignment found as aforesaid, the Chancellor in this Case shall grant a Pardon to the Party for his Life, without applying to the King. By all Judges of England. Jenk. 178. pl. 87. cites 19 H. 7. — S. P. Hawk. Pl. C. 76. cap. 29. S. 25. — S. P. Br Charter de Pardon, pl. 65. cites 4 H. 7. 2.

Serjeant Hawkins says, By this Statute at first Sight it seems to be imply'd, that it is left to the Discretion of the King, whether he will grant a Pardon in such Case, or not. And agreeable hereto it is said in four several Notes in Fitzherbert's Abridgment of Cases in the Time of E. 3. That a Person found Guilty of Homicide *Se Defendendo*, is to be remitted to Prison, in order to attend the King's Grace. And yet in two other Notes in the very same Year, it is said, That in such Case, if the Prisoner cause the Record to come into Chancery, the Chancellor will make him a Charter of Pardon without speaking to the King; and this seems to be settled at this Day, and agreeable to the ancient Common Law, which shall not without express Words be restrained by a Statute which seems to be made in Affirmance of it. And therefore these Words in the Statute, (if it shall please the King,) shall be taken to be spoken only out of Reverence to him, and not as intend'd to make the Right of the Subject to such a Pardon precarious. And the Cases above-cited, which seem to the contrary, may be reconciled with the others, by intending them to mean only the Grant of the King's Pardon to a Person represented to him as Guilty of Homicide *Se Defendendo*, without any Certificate of the Verdict upon Record; for none of those Cases make any Mention of such Certificate, as the others do; and if there be no such Certificate, it seems plain that the Grant of a Pardon is a mere Matter of Favour. And it has been adjudged, that such a Pardon is as necessary for one who is indicted only of Homicide *Se Defendendo*, and confesses it, as for one who is found Guilty of Homicide *Se Defendendo*, on an Indictment of Murder. 2 Hawk. Pl. C. 381. cap. 37. S. 2. — S. P. 2 Inst. 310. 317.

2. Where special Fact, amounting to Justifiable Homicide, is found by the Jury, the Party is to be dismiss'd without being obliged to purchase any Pardon &c. Hawk. Pl. C. 70. cap. 29. S. 3.

(Q. a) What Thing shall pass by a Pardon.

1. IF A. be bound to B. in an Obligation of 100 l. and after B. is attainted of Felony, and after the King by his Letters Patents pardons him, by these Words, scilicet, Pardonavit, remisit & relaxavit prædict. B. sectamque pacis suæ quæ ad ipsum Dominum Regem verius ipsum pertinet de eo quod fecit such Felony &c. & Omnia quæ ad Dominum Regem pro Felonia præd. verius ipsam Regem tunc pertinet, vel pertinere potuit &c. firmamque Pacem eidem B. inde conceit: This does not restore B. to the said Obligation; for it was in the actual Possession of the King by the Attainment before Pardoning,

Pol. 178 bis

See (S. a)
(U. a. 3)
Travel v.
Carteret.

found, and here are not any Words of Grant or Restitution, but only of Pardon. *Trin. 23 Car. 2. B. R. between Drew and Chap- pel, adjudged upon a Demurrer. Intratur Hill. 11 Car. Rot. 921.*

2. A. was bound to the King in a Recognizance of 1000 l. and was *attainted of Treason*; the King pardoned him, and restored to him all his Goods and Chattels which he forfeited by the Attainder: This Debt to the King remains; for it was only suspended by the Delinquency of A. By all the Judges of England. *Jenk. 209. pl. 43. cites 1 Mar. D. 124.*

3. In Debt on Bond Defendant pleads, that after the making it the Plaintiff was attainted for Coining, which the Plaintiff contestes, and says that afterwards the Queen did by Pardon restore unto him *omnia bona & Catalla sua*; and on Demurrer the Question was, Whether Debts by Specialty were included in those Words? *Goldsb. 114. Adams v. Oglethorpe.*

4. A. became Felo de se in the Year 1648. afterwards by the Act of General Pardon all Felonies were pardoned, excepting Murder; and then upon an Inquisition it was returned, that A. had a *Term for Years* of the yearly Value of 100 l. It was adjudged that this was pardoned by the General Pardon; for *nothing is vested in the King till Inquisition found*; and no Inquisition was found till after the General Pardon, and so the Term for Years was gone before the Inquisition found. *Sid. 150. 15 Car. 2. The King v. Warde.*

Lev. 8. S. C. — S. P. Hawk. Pl. C. 68. cap. 27. S. 9. — But in Scire Facias by an Administrator, the Defendant pleaded that the In-
testate in the Year 1655 became a Felo de se; and this was found by an Inquisition before the General Act of Pardon; Plaintiff demurs. Adjudged that this *Debt being vested in the King before the General Pardon*, was not pardoned thereby, and could not pass without *Words of Restitution*. *Per Cur. Sid. 168. Mich. 15 Car. 2. B. R. Tombes v. Etherington.* — *Saund. 361. S. C.* — 2 L. P. R. 269. Tit. Pardon, cites S. C. — Lev. 120. S. C. says it was resolved that the Debt was *extinguished* in the Hands of the Debtor by the Clause of the Act, which pardons and releases *all Causes, Things, Quarrels, Suits, Judgments and Executions*; which is to be taken generally, as well *Judgments and Executions for Debts of the King*, as for *Offences*; and as well for *Debts due to the King by Assignment or Forfeiture*, as Debts due to him *originally*. — S. P. 2 Hawk. Pl. C. 396. cap. 37. S. 55.

5. 12 Car. 2: pardoned *all Debts, Judgments &c.* An Inquisition found one Felo de se, who had a Debt due by Judgment to him. This is pardoned by the said General Pardon. *Sid. 264. Trin. 17 Car. 2. B. R. Lock v. Etherington.*

6. The Word (*Pardon*) includes in it self the Word (*Release*) and so are 1 H. 7. 10. 11 H. 7. 11. For all, that is not within the Exception, is by the general Words pardon'd and gone; and the Case of Sir George *Binion* of late Time in the Exchequer, does not oppose it; for there Sir G. B. being indebted to the King, and J. S. being indebted to him, Process out of the Exchequer Chamber issued against J. S. and his Goods seized for the King, and then came the Act of Oblivion; and adjudged that the Debt of J. S. remained, because he was Debtor to Sir G. B. and not to the King; but if he had been an *immediate Debtor* to the King, the Debt should be gone, per Twisden and Keeling J. against Windham J. upon Conference with the Barons of the Exchequer and other Justices. *Sid. 265. Trin. 17 Car. 2. B. R. in Case of Lock v. Etherington.*

7. The King presented to a Benefice which had become void by a Simoniacal Agreement, and afterwards by a General Pardon restores *all Goods and Chattels forfeited* by Reason of any Offence done. *Per Cur.* The King's Presentee has a good Title notwithstanding the Pardon; for here was an Interest vested in the King, which the Pardon cannot divest; and the Presentation shall not pass by the Words (*Goods and Chattels*) which are Things of a lower Nature, and all in the Personalty, as was said. *Arg. 2 Mod. 52. Trin. 27 Car. 2. The King v. Turvil.*

8. A Pardon of *all Forfeitures* will not *divest an Interest vested* in the King. *Per Cur. 3 Mod. 100. Pasch. 2 Jac. 2. B. R. The King v. Saloway.*

(Q. a. 2) Pardon of one, in what Cases it shall be a Pardon of another. Sec. (Q. a. 3)

1. **P**ARDON of the King granted to an Approver shall discharge the Appellee. Br. Charters de Pardon, pl. 62. cites 47 E. 3. 5. Contra of Death of Approver ; there he may be arraigned upon the Approvement. Ibid.

2. If Twenty are indicted of Felony, and after the King pardons the one, without making Mention of the others, this is good ; for Felony is several, and not joint, and it is as several Indictments against every one by himself, and not joint. Br. Charters de Pardon, pl. 45. cites 6 E. 4. 5.

3. If two are Joint-Debtors to the King, and he pardons the one, this shall not serve the other ; quære. Br. Patents, pl. 90. cites 2 R. 3. 4. S. P. For it shall be intended to be of a Sole Debt due by him only, as it was said ; therefore quære. Br. Charters de Pardon, pl. 57. cites S. C. — So where two are bound to the King, and both in toto, and the King releases to the one, the other shall not take Advantage. Br. Charters de Pardon, pl. 4. cites 34 H. 6. 3. & 50. 35 H. 6. 1. 25. — S. P. Br. Ibid. pl. 36. cites 1 H. 7. 10. — Contra, it seems, of Joint Bond by two, and he releases to the one. Per Ashton ; but per Tashy and Prisot, it shall serve both, where they are bound both in toto. Brooke makes a Quære. Br. Charters de Pardon, pl. 4. cites 34 H. 6. 3. & 50. 35 H. 6. 1. 25. — For it was said there that in the Exchequer, if two are Accountants, and the King releases to one, yet those of the Exchequer will have the whole Account of the other. Ibid.

4. If a Man and his Sureties are bound to pay Fine to the King, or 20 l. by a certain Day, and do not pay at the Day, and the King pardons the Principal, this shall discharge the Sureties. Br. Charters de Pardon, pl. 36. cites 1 H. 7. 10. It is agreed, That if a Man be bound to the King as Surety for another for the Payment of a certain Fine, or other Debt due to the Crown, the Pardon of the Principal is a Discharge of

5. Contra of Sureties of the Peace ; for there nothing is due till the Bond is forfeited ; for there if the King pardons the Principal after Forfeiture, the Sureties are discharged. Contra of Pardon before the Forfeiture. Ibid.

6. And where a Man is bound, that A. Sheriff of N. shall pay his Profers such a Day, Release of the King to the Sheriff after the Day does not acquit the Surety of the Breach. Contra of Pardon before the Default. Per Townsend. Br. Charters de Pardon, pl. 36. cites 1 H. 7. 10. Discharge of

the Surety also. But it seems to have been holden as a general Rule, That where a Man is bound as Surety for another, for the Performance of a future Act, the Discharge of the Principal before the Time of Performance, will not discharge the Surety, because nothing was due to the King at the Time of such Discharge. But it seems extremely nice ; neither do the Cases brought for the Proof of it seem any Way to come up to it ; for as to the first of them, viz. That of the King's Release of a Recognizance of the Peace to the Principal before it is forfeited, which shall not discharge the Sureties, it may be answered, That it will not so much as discharge the Principal. And as to another Case cited for this Purpose, viz. That of the King's pardoning J. N. the Building of such a House, for his Building whereof J. S. is bound to the King, which shall be no Discharge to J. S. it may be answered, That as this Case is put, J. N. doth not seem to be bound at all, but only J. S. who therefore does not seem to come under the Notion of a Surety, but of a Principal. 2 Hawk. Pl. C. 387. cap. 37. S. 23.

7. An Alienation without Licence to A. Tenant for Life, Remainder But where to B. in Fee ; a Pardon of Alienation to A. will not serve B. Jenk. Alienation is to two Joint-tenants in Fee, a Par-

don of all Alienations to one will serve the other ; for they make but one Tenant. Jenk. 222. pl. 77. cites 12 H. 6. 26. — This was as the Law stood before the 12 Car. 2. cap. 24 which took away Fines for Alienations

See (Q. a. 2) (Q. a. 3) Pardon of *Principal*, in what Cases it pardons the *Accessory*.

2 I. P. R.
269. The
Pardon, cites
S. C.

1. **A** WAS indicted as Accessary to a Burglary committed by one who had been *tried and attainted*, but *procured his Pardon*, which had been *allowed*; and now A. prayed that she might be discharged: But resolved that she *must plead to the Indictment*; for tho', if the Principal have either his Clergy, or be acquitted, or obtain his Pardon before Judgment, the Accessary shall not be questioned; yet *if the Principal be attainted the Accessary must answer*, tho' the Principal be pardoned. Raym. 477. Mich. 34 Car. 2. Anon.

2. It seems generally agreed, That notwithstanding all Felonies are several, and consequently a Pardon of one Man cannot be a direct Discharge of another, yet in some Cases the Felony of one Man may be so far dependent upon that of another, that the Pardon of one will by a necessary Consequence enure to the Benefit of the other: As where the *Principal* pleaded *his Pardon*, and was *allowed it at Common Law before his Attainder*, or where he pleads, and is *allowed it at this Day before his Conviction*; in which Case it seems that the Accessary may by a necessary Consequence take Benefit of it, because he cannot be arraigned till after the Principal is convicted. 2 Hawk. Pl. C. 387. cap. 37. S. 22.

See (S. a)
(U. a)

(R. a) The Pardon of what Things Inclusive, shall be Pardon of others.

1. **D** 8 Eliz. 249. 83. Breton. Manor held in Capite, being in Lease for Years, and Rents reserved descended to the Heir, who entered and took the Rents, and before Office found, General Pardon of 5 El. came and discharged all Intrusions and Entries, and by the Court of Wards Saunders and Dier, consequently Mesne Issues and Liveries are discharged, and a Precedent cited accordingly, by the Opinion of 5 in the same Case; but the Land was not in Lease. But by 2 The Queen may have Action of Account against Breton as her Bailiff or Receiver, and also an Action of Debt against the Lessees, who both are excepted out of the Pardon.

* Orig. is
(Enfant.)

2. 3 H. 7. 3. b. Duffey seemed to be Contra; for he said that if Pardon be made to the Heir of an Intruder, of the Intrusion, Office found after shall serve the King for all the Profits before [but] not to [any] other * Intent.

3. 16 E. 4. 1. cited in St. Prerogative 40. b. the Pardon ought to be as well of the Profits as of the Entry, or otherwise after Office found, the King shall be answered of the Profits.

4. St. Prerogative 40. b. After Death of the Ancestor the Heir enters, the King pardons him all Entries with the Profits before Office found; this pardons Livery, and is special Livery.

5. If the King pardons Outlawry, which is promulged upon *Indictment of Treasons* at the Suit of the King, and whatsoever belongs to the King, yet he shall make Fine and Ransom; for *Fine and Ransom are not pardoned unless by special Words*. Br. Charters de Pardon, pl. 35. cites 22 Aff. 47.

6. Felony is said to be included in High Treason, and consequently a Pardon of Felony discharges an *Indictment of High Treason*, if it want the Word *Proditum*. Hawk. Pl. C. 65. cap. 25. S. 2.

(S. a) H. 7. 3.

(S. a) What shall be [*said to be*] pardoned [*by a General Pardon.*]

See (P. 43)
(R. 4) (U. 4)
—Parks, pl.
6 — Prohibition (S.)

1. If a Man upon a Suit in the Ecclesiastical Court be condemned in Costs to the Party, and thereupon is Excommunicated, and after comes the General Pardon of 21 Jac. and after a Significavit is made, and he taken upon a Capias de Excommunicato capiendo, and this returned in B. R. he may come into B. R. without any Seire facias against the Party at whose Suit he was taken, and plead the Pardon in Discharge of the Contempt; and it shall be allowed; for the Contempt of the Excommunication was pardoned, tho' not the Costs, and the Party ought to begin again to compel him to pay the Costs. D. 17 Car. B. R. between *Codrington and Redman*. Adjudged per Curiam, and there cited *Purfleet's Case* in B. R. Mich. 2 Car. adjudged.

Cro. E. 168.
S. C. —
Jo 227 S. C.
by Name of
Codrington
v. Redman.
—S. P. 2
Hawk. Pl. C.
394 cap. 3.
S. 42. — 14.
Error of
Judgment in
Debt, the
Defendant
pleads that
the Plaintiff

was Excommunicated; to which the Plaintiff in Error pleads the General Pardon. And the Court (as it seems) held, that by it the Excommunication was discharged, for they awarded a Respondeas Oulter. J. Rep. 68 a Mich. 6 Jac. Trollop's Case. — It was doubted by the 2 Ch. Justices whether an Excommunication might be discharged by the King's Pardon, and the Plaintiff restored to his Suit, without Absolution and Reconciliation to the Church. Cro. J. 212. Trollop v. Richardson. — The Imprisonment upon the Contempt is discharged, but not the Taxation of Costs (being for the Plaintiff's Benefit;) and by Consequence the Excommunication is not discharged; for that depends upon the Principal: Wherefore he was remanded. Cro. J. 159. Banning v. Fryer.

2. If a Man be attainted of Felony by Outlawry or Verdict, and the King pardons him *in Felonies*, this shall not serve. Per Strange; for it shall be intended that the King had not Conscience, and was deceived in his Grant. Br. Patents, pl. 15. cites 8 H. 6. 19.

S. P. 2 Hawk.
Pl. C. 383.
cap. 37. S. 8.
—S. P.
Lat. 141. —
S. P. But the

particular Crime for which he is convicted ought to be particularly mentioned. 2 L. P. R. 275. Tir. Pardon. — So a General Pardon of all Robberies is not good, where there is a Conviction by Verdict of one in particular. Sid. 432. Mich. 21 Car. 2 B. R. The King v. Maddock. — A General Pardon of all Felonies does not extend to Piracy. Hawk. Pl. C. 99. cap. 37. S. 6. — S. P. 2 Hawk. Pl. C. 384. cap. 37. S. 11.

Serjeant Hawkins says, It has been holden that *anciently* a Pardon of all Felonies included all Treasons, as well as Felonies whatsoever; and it seems to be taken for granted in many Books, that a Pardon of all Felonies in general, without describing any one in particular, may, even at this Day (if the Party be neither attainted nor indicted) be pleaded in Bar of any Felony whatsoever, coming within the General Limitations thereof, except Murder or Rape; and the Reason why it cannot also be pleaded to Murder or Rape is, because the Statute of 13 R. 2. requires an express Mention of them. But the Serjeant says he finds this Point no where solemnly debated, neither does it seem easy to reconcile it with the general Rules concerning Pardons, agreed to be good in other Cases; for if a Felony cannot be well pardon'd where it may be reasonably intended that the King when he granted the Pardon was not fully apprised of the State of the Case, much less does it seem reasonable that it should be pardoned, where it may be well intended that he was not conscious of it at all. And if a Felony whereof a Person is attainted cannot be well pardoned, even tho' it appear that the King was informed of all the Circumstances of the Fact, unless it also appear that he was informed of the Attainder, much less does it seem reasonable that a Felony should be well pardon'd, where it does not appear that he knew any Thing of it; for by this Means, where the King in Truth intends only to pardon one Felony, he may by Consequence pardon the greatest Number of the most heinous Crimes. And for these Reasons he supposes General Pardons are commonly made by Act of Parliament. As to the Precedents of such General Pardons in *Rastall's Entries*, it may be answered, That their Authority seem to be of less Weight, when compared with those many Precedents of Pardons in the *Register*, every one of which particularly describes the Offence which is pardoned, and even those which relate to Homicide by Lunatics or Infants, or in Self-defence &c. except only one which pardons Hides, but expressly excepts all voluntary ones. And therefore where the Books speak of Pardons of all Felonies in general as good, perhaps it may be reasonable for the most Part to intend that they either speak of a Pardon by Parliament, or that they speak of the particular Crime is mentioned in the Pardon, tho' they do not express it. 2 Hawk. Pl. C. 383. cap. 37. S. 9.

3. A Pardon granted at the Suit of the Party, shall be taken more strongly, than a Pardon granted ex parte Regis, and therefore being against the Party, or a General Pardon, or a Pardon granted ex parte Regis, shall be taken more strongly, than a Pardon granted ex parte Regis.

Le 22. S. P. King, and more strong for the Benefit of the Party; for it is intended there that the King has Knowledge of the Matter: Contra where it comes by Suit of the Party, or by Surmise. Br. Charters de Pardon, pl. 25. cites 37 H. 6. 21.

Br. Charter de Pardon, pl. 71. cites S. C. — But where Intrusions are pardon'd by Parliament before Office found, where the Heir has entered, there the Profits, the Entry, and Livery and all are pardoned; and there, tho' the Office comes after, which finds the Intrusion of the Heir, yet all is gone by the Pardon. Br. Intrusion, pl. 21. cites 33 H. 8. — Br. Charter de Pardon, pl. 71. cites S. C. — Br. Intrusion, pl. 16. cites H. 7. 3. S. P. — Br. Office devant, pl. 31. cites S. C. — Br. Livery, pl. 65. S. P. — S. P. Dy. 241. adjudged. — S. P. adjudged Ley 48. *Santlyger's Case*, where Lands were held in Capite, and were devised from the right Heir to B. the next Heir, during whose Minority J. S. entered and received the Profits; and held, that tho' *Intrusions* were excepted expressly in the Pardon, yet this was within the Pardon, because *no Office was found*.

4. If it be found by Office, that the Tenant of the King died seised, and that his Heir intruded, and after Intrusions are pardoned by Parliament, yet the Heir shall render the *Mefne Profits*, but shall not be punished for the Intrusion, for this is pardoned, but not the Profits; and the Escheator shall be charged of the Profits where the Office is recorded. Br. Intrusion, pl. 21. cites 33 H. 8.

5. A. Tenant by Knight Service in Capite dies, his Heir of full Age, he enters and takes the Profits before any Office found. 5 Eliz. an Act of Parliament pardons all Entries and Intrusions: This discharges the *Mefne Issues* taken, and justifies the Entry, and amounts to a Livery. The Entry before the Office being pardoned, all the Consequences of it are pardoned; Livery is made to the Heir to justify his Entry; and an Office found afterwards comes too late. By the Court of Wards, and all the Judges Assistants there. Jenk. 234. pl. 9. cites 8 Eliz. D. 249.

If there be an Intrusion, and an Office found of it, a Pardon after the said Office ought to pardon the Intrusion and the *Mefne Profits*, or else it will not discharge them; for they are vested in the King, and being vested, they cannot be discharged without being mentioned: In the principal Case they were never vested, for the said Pardon before the Office found prevented the vesting of them. Jenk. 234. pl. 9.

6. Jurors eat and drank at their own Costs before Verdict, and after their Departure from the Bar; and this was certified upon the Poitea: And it was held that the Jurors were fineable; but it was held clearly, that it was pardoned by the General Pardon. Mo. 599. pl. 825. Hill. 37 Eliz. Hall v. Vaughan.

Charge, from Censure. Freem. Rep. 79. Pasch. 1673. C. B. Bellamy v. Player.

7. If one pleads a false Plea, for which he is fineable, and after and before the Judgment there comes a General Pardon, the Judgment shall be that he is not in *Misericordia quia Pardonatur*. Mo. 599. pl. 825. Hill. 37 Eliz. Hall v. Vaughan.

8. A Writ of Entry was brought, and before Judgment came the General Pardon Anno 35 Eliz. by which all *Fines, Amerciaments, Contempts &c.* were pardoned; after which there was Judgment for the Plaintiff, but the Entry was, *Sed non Misericordia quia pardonatur*. Upon Error brought, it was held a good Judgment, and that by the Pardon of the original Tort the *Amerciament* was discharged; for the Cause of the *Amerciament* was the Tort and Contempt of the Tenant, in not rendering the Land to the Tenant, according to the King's Writ; and tho' the Judgment and *Amerciament* were subsequent to the Pardon, yet the original Cause of Action being pardoned, of Consequence the *Amerciament* is pardoned likewise. Adjudged. 5 Rep. 49. Mich. 39 & 40 Eliz. B. R. Vaughan's Case.

9. Sheriffs cannot collect *Fines or Issues* after a General Pardon; and for so doing an Under-Sheriff was punished in the Star-Chamber. Godb. 178. Marriot's Case.

The Trespass was held to be done 10. *Trespas* was brought the 25th September 1 Jac. with a Continendo to the 27th of November after: Upon Not Guilty pleaded by the Defendant,

and,

dant, the *Plaintiff had Judgment*: 'The Judgment was not, *Quod Capiatur*; for a *General Pardon* pardoned all Offences until 24 September 1 Jac. and upon this, the Force, which gives a Fine to the King, was pardoned. Judged and Affirmed in Error. Jenk. 303. pl. 76. cites P. 6 Jac. Strickland v. Thorp.

21st June. with a Continuando &c. The Entry was, viz. Nihil de Fine, quia

pardonatur. It was insisted that only Part of the Trespass was pardoned, viz. from 21st June to 25th September, but that the Trespass from the 25th to the 6th November, is not pardoned, and therefore as to that there ought to have been a *Capiatur*: But the Court held the Judgment well enter'd; for the first Entry in a Trespass being only *Vi & Armis*, the Pardon of this is a Pardon of all depending upon it; for the first Entry only made the Trespass; besides, it appears by the Declaration, that the Continuance of the Trespass is not laid in the Entry, but only quoad Depasturationem & Consumptionem Herbarum, which is added only to increafe Damages to the Party, but not the Fine to the King. Yelv. 126 S. C.—Cro. J. 207. S. C.—Brownl. 211. S. C.

11. A. was indicted upon the Statute of *Forcible Entry*, and *Restitution* was awarded. A. travers'd it, and a *Venire facias* was awarded, and *Distress* with the *Nisi Prius*; after which came a General Pardon, which pardon'd the Force: The said Trial was stay'd, by the Opinion of all the Judges of England; for the King will not proceed against his Pardon. Jenk. 312. pl. 98. cites 1 Cro. 144.

12. A. exhibited a *libellous Bill* against B. in the Star-Chamber; after which came the General Pardon of the 21st Jac. and then for Want of Cause being shewn, it was taken off the File, and the Plaintiff fined 100 l. to the King, and 100 l. to B. and it was resolved that the Fine and Costs are discharged, upon the Authority of Hutt 79. Beverley's Case, which did not at all differ from the present, tho' a Day was here given to shew Cause; for the Plaintiff hath not any Means to plead the Pardon. Cro. Car. 68. Pasch. 3 Car. by all the Judges at Serjeant's-Inn.

13. If Costs in the Ecclesiastical Court are not taxed, a General Pardon discharges them. Lat. 190. Palmer v. Warner. Lat. 159. S.P. adjudg'd. —If awarded

before the Pardon, but not tax'd till after the Pardon, they are not discharged. Cro. Car. 9. Dr. Brickenden's Case. —Costs were taxed upon an Attachment against an Attorney for Male-practice, by Way of Amends to the Party grieved, and then came out a General Pardon, which discharged the Contempt. The Court inclined that the Costs were discharged, for they are not Costs upon a Judicial Proceeding, but a Kind of Composition with the Offender, and so not like Costs tax'd in the Ecclesiastical Court pro Reformatione Morum. 2 Vent. 194. Anon. cites 5 Rep. 51. Hall's Case —2 Hawk. Pl. C. 394. cap. 37. S. 43. —A was sentenced for Defamation in Court Christian, and appealed to the Arches, but, upon the Act of General Pardon of 21 Jac. 1. coming out, quitted his Appeal; upon which the Court of Arches taxed Costs against him. The Court held clearly, and it was admitted on both Sides, that after the Pardon they had no Power to tax Costs; and that the Defendant did well in dropping his Appeal, because the Sentence on which it was founded was vacated by the Pardon of the Offence. Lat. 155. Lewis v. Whitton. —For a Contempt in a Court of Equity, if Costs are taxed to the Party grieved before the Pardon, they are not discharged, because it is in a Court of Equity, where Costs are at the Pleasure of the Judge. See 2 Vent. 194 says, it was held per Atkins Ch. B. and Vent. J. in the Dutchy Court, that the Costs were not discharged. —2 Hawk. Pl. C. 394. cap. 37. S. 43. cites S. C. —No Costs for a Contempt discharged by the General Pardon. Toth. 108. cites 27 Eliz. Fulwood v. Fulwood.

14. The Coroner returned, that A. was killed with a Gun by Misadventure. The Court held this not within the General Pardon; for that it was *Manlaughter*, being occasioned by an unnecessary Act; and the Defendant must purchase a Pardon. (So that it seems the Act does not pardon Manlaughter.) Sty. 337. Trin. 1652. C. B. Anon.

15. General Pardon does not pardon *Simony*, tho' it concludes with such general Words, viz. *And all other Offences which the King can pardon*. It is true he cannot be punished for this Simony upon the Statute, yet he shall be deprived; for in Truth it makes the Church void, tho' the King pardons it by express Words. Sid. 170. Mich. 15 Car. 2. C. B. Philips's Case, cites Hob. 167.

2 L. P. R. 270. Tir. Pardon, cites S. C. —It is not pardon'd by those Words, because it is

Malum in se. Sid. 222. Snow v. Phillips. And says it was so adjudged by the Delegates in S. C. —But Serjeant Hawkins says this seems to be no good Reason; for Barretry, and the Injurious striking of another, and generally all Offences at Common Law, are also *Mala in se*; and yet it seems clear, that unless they be Capital, they may be pardoned by such a Pardon. 2 Hawk. Pl. C. 388. cap. 37. S. 40

3. Ch. R.
15. Bolton
v. Ann. S. C.

16. A *procurator* for *Robert Arden*, was discharged by the Act of Oblivion 1679. was decreed to be *Cham. Cases* 55. Trin. 16 Car. 2. Bolton v. Arme.

17. *Heir* not actually paid, but *nominal*, was not discharged by the Act of Indemnity, as Lord Ch. J. *Partridge* conceived; but 'twas referred to make a Case. *Cham. Cases* 59. Mich. 16 Car. 2. *Dickenson v. Knowell*.

18. A. was indebted to B. and afterwards during the Usurpation, his Estate was sold by the Sequestrators to H. who deducted out of the Purchase-money his Debt. After the Restoration and General Act of Pardon pass'd, A's Heir brought a Bill in Equity against B's Executor, praying an *Account of the Profits*. The Court would not compel an Account; for that *all Monies received by the Purchasers*, are pardoned by the Act; but upon B's Executor consenting to account, on paying back the Purchase-money, and B's Debt, it was decreed accordingly. *Cham. Cases* 172. Trin. 22 Car. 2. in Canc. Stowel v. Long.

19. The Defendant was sued in the Spiritual Court for *Dilapidations*, and pleaded the General Pardon, by which all Offences, Contempts, Penalties &c. were pardoned; and for this Reason he prayed a Prohibition; but it was denied, because the Statute *never intended to pardon any Satisfaction for Damages*, but only to take away temporal Punishments. 3 Mod. 56. Hill. 36 Car. 2. B. R. Pool v. Trumbal.

20. A. was convicted of Barrettry, and produced a Pardon, which was of all Treasons, Murders, Felonies, and all Penalties, Forfeitures and Offences. The Court said the Words (*All Offences*) will pardon all that is not Capital. 1 Mod. 102 Mich. 25 Car. 2. B. R. Angell's Case.

21. By the Act of General Pardon 13 Car. 2. S. 5. *All Debts* and Sums of Money *due to the Crown* are discharged, tho' they do not relate to the Wars. But Acts and Actions of *Subjects* are not discharged, unless they are such as *concern the Wars*. Resolved per Cur. 3 Lev. 134. in Case of Travell v. Carteret.

Serjeant
Hawkins
says, It seems
to be a settled
Rule,
That Pardon

by the King, *without express Words of Release*, shall not discharge either from the King or Subject an Interest, either in Lands or Goods, vested in them by an Attainder or Conviction precedent; yet it seems agreed, That a Pardon prior to a Conviction, shall prevent any Forfeiture either of Lands or Goods. 2 Hawk. Pl. C. 396. cap. 57. S. 54.

22. A Question was, Whether *after Verdict* for the King, a Pardon shall excuse the Forfeiture? But adjournatur. See the Arguments on both Sides. 3 Mod. 241. to 243. Mich. 4 Jac. 2. B. R. The King v. Johnson.

23. A. was indicted for keeping a Glass-house, being a Nuisance, and thereof convicted and fined; afterwards came the General Pardon: The Court held upon Consideration, that he was discharged thereby only as to the Fine, and not as to the Abatement of the Nuisance; for that is not a Punishment to the Party, but a Removal of that which is a Grievance to other People, and which any common Person may abate. Salk. 458. Hill. 1 W. & M. B. R. The King and Queen v. Wilcox.

24. A. was convicted of Deer-stealing in the Sum of 20 l. The Question was, Whether this was within the General Act of Pardon? Pengelly Serjeant argued that this was not pardoned, being a final Judgment on which a Writ of Error lies; and that it was not such an Offence as could be pardoned, because of the Forfeiture to the Party grieved, which is Part of the Judgment, so that he has an Interest in the Penalty, and because the Punishment is by Way of Satisfaction to the Party, and not for Example. Arg. Salk. 383. M. 9 Ann. B. R. The Queen v. Barret.

25. A General Pardon pardons Publick Offences done to the Commonwealth, but not private Injuries done to particular Persons; for if it should, this would be to mix Mercy and Injustice together; to be pitiful to one, and cruel to another, in one and the same Act. 2 L. P. R. 271. Tit. Pardon.

26. Sergeant Hawkins says, It has been questioned whether a General Pardon *et al.* 7 *pl.* extends to *Chaplain* or *Clergy*. 2 Hawk. Pl. C. 389. cap. 37. S. 27.

(S. a. 2) What shall be said within the Exception of a General Pardon.

1. **A** WAS indicted for Piracy; and for Standing mute, was condemned to suffer the Penalty of *Paine fort et dure*. Before it was put in Execution came a General Pardon of all Pains, Contempts and Executions, excepting Piracy: And it was held by the major Part of the Justices, that the Party might be indicted again for the Piracy, the Judgment (which was pardoned) being only for the Offence in Standing Mute. Dy. 308. Pasch. 14 Eliz. B. R. Cobham's Case.

2. To an Information on the 5th Eliz. for *converting arable Land into Pasture*, and for *continuing the same three Years*, the Defendant pleaded Not Guilty as to the Conversion, and to the Continuance the General Pardon of the 15th Eliz. and on Demurrer it was argued on one Side, that the Act by excepting only this Conversion, did not extend to the Continuance, (they being distinct and several Things) and to the Continuance was pardoned: And on the other Side it was insisted, That the Conversion being excepted, that includes the whole Offence, and extends therefore to the Continuance. Adjournatur. Le. 274. Mich. 26 Eliz. in Scacc. Cleypole's Case.

S. C. argued Mo 117. pl. 262. by Name of *Duland v. Cleypole*, and says that the Counsel with the Defendant took diverse Exceptions to the Information,

which in Truth were material: wherefore the Court could not give Judgment with the Plaintiff; but that the Cause was ended by Composition.

3. The General Pardon of the 28th Eliz. is of all Felonies, excepting Burglary &c. The Question was, Whether an *Attender of Burglary* be within this Exception? It was resolved by all the Judges of England, that it was excepted, for if such an Exception would include Burglary *before it was tried*, tho' it does not then appear to be so in the Eye of the Law, and stands a Doubt left at the Trial, whether Burglary or not, a Fortiori ought it to be excepted when the Burglary appears of Record by Judgment at Law; and since the Burglary, which is the Foundation, is excepted, therefore every Thing consequent thereupon, is excepted likewise. 6 Rep. 13. a. Cases of Pardons.

2 Hawk. Pl. C. 385. cap. 37. S. 13. cites S. C. and adds, that therefore it being within the Letter of the Exception, it cannot but be intended to be within the Meaning of it also.

Neither does it follow, That because a Pardon of a Felony whereof a Person is attainted, without mentioning the Attainer, therefore such a general Exception of all Felonies, shall not extend to those whereon there hath been an Attainer, for the Cause of such a Pardon is, on this Special Reason, that the King ought to be fully apprized of the Proceedings against the Party before he pardons him.—S. P. Jenk. 209. pl. 85.—; Inst. 234. cites Hist. 29 Eliz. S. C.—; S. P. 3 Inst. 238.

4. A. was bound in a *Recognizance* to appear before the High Commissioners, and not to depart without Licence; to which A. pleaded the General Act of Pardon, which excepts all Recognizances &c. except Recognizances for Appearance. Adjudged by all the Barons of the Exchequer, that the Departure without Licence was not pardoned, but within the Exception; for the *not departing without Licence* was only mentioned in the Recognizance, in order to continue her Appearance; and tho' not mentioned in the Exception, yet it is not a new Thing, but within the Scope of it. 2 Le. 179. Trin. 31 Eliz. Piddell's Case.

A Bill was brought in the Star-Chamber, and then pass'd the General Pardon; and afterwards the Cause was tried, and a Fine set on the Defendant for Part of the Matter charged in the bill, and for other Matter

charg'd therein, the Plaintiff was fined to the King and the Party grieved, it being *scandalous, and not examinable by the Court*. The Question was, whether this Fine and Damages set upon the Plaintiff were within the Exception of the Pardon, which is of *all Offences &c. whereof, or for which any Bill within 8 Years before was, and is now depending*. Adjudged that it was pardon'd, for this shall not be said to be a Bill depending (according to the Exception) *on the Part of the Plaintiff*, to charge him with the Offence; for his Bill can never be said a Bill depending against himself, on which the Plaintiff is to be fined; but it was only intended to except Bills depending, *with Regard to the Defendant*, and this Contempt was *accidental and collateral* to the Bill, which being pardon'd, by Consequence the Fine is pardon'd likewise. By all the Judges at Serjeants-Inn in Fleet-Street, except one. Hutt. 79. Hill. 1 Car. Beverly v. Powell.——Jo. 89. S. C.

5. A. brought his Bill in the Star-Chamber for Riots and Routs &c. which was five Years before the General Pardon, in the Reign of Q. Elizabeth, wherein were excepted *all Penalties &c. incurr'd for any Offence &c. for which any Bill hath been exhibited within 8 Years before, and now depending*, and also except *all Offences, Contemps &c. for which any Bill was exhibited within four Years before, and now depending*. The Question was refer'd by the Court of Star-Chamber to Coke Solicitor-General, who certified that the Fine to the Queen was not pardon'd, but excepted; but the Imprisonment and Corporal Punishment were pardon'd: But if the Bill had been exhibited *within the four Years*, then the Offence itself being excepted, by Consequence all Incidents or Dependents upon it, whether Corporal or Pecuniary, are excepted; and therefore in that Case nothing is pardon'd. And this Certificate has been often confirmed by the Opinion of the Court of Star-Chamber. 5 Rep. 46. b. Mich. 35 & 36 Eliz. Franklin's Case.

6. In the General Pardon of the 35 Eliz. there was an Exception of *all Offences for which any Suit at any Time within four Years before, or upon the last Day of this present Parliament, and is, or shall be now, on the last Day of the Sessions, depending in the Star-Chamber*. And in this Case a Bill was exhibited in the Term before the Parliament, and Process award'd returnable the Term after the Sessions ended. Adjudged that this was a Suit depending before the Return or serving of the Subpœna, and so within the Exception, this being a Process issuing out of, and returnable into the same Court where the Bill is exhibited, (viz.) the Star-Chamber; and there is a great Diversity between this and an Original issuing out of Chancery, and returnable in B. R. or C. B. for there the Original comes out of another Court, and there is no Record in B. R. or C. B. before the Return of it. Adjudged. 5 Rep. 47. Hill. 39 Eliz. G. Littleton's Case.

7. A. was outlawed on a Recognizance in Nature of a Statute Staple, and after came the General Pardon of the 39th Eliz. excepting *all Debts due to the Queen by Recognizance &c. or otherwise, and except all Debts already forfeited by Reason of any Outlawry*. It was resolv'd, that by the last Exception it appears to be the Queen's Intent not to include any Debts which accrued due by Outlawry within the first Exception; for as to these there is a *special Saving*, and in a special Manner; and being a General Pardon, it is to be taken most beneficially for the Subject, and most strongly against the Crown. 5 Rep. 49. b. 50. a. Hill. 41 Eliz. in Scaccario. Wyrall's Case.

8. The General Pardon of the 21 Jac. was with an Exception of *all Tithes, and Actions of Quare Impedit, other than such which the King may have by Reason of any Lapse incurr'd Ultra three Years last past for any Benefice whereof any Incumbent then was, or the last Day of the Parliament should be, in Possession by Presentation or Collation*. In this Case the Church became void by the Incumbent's taking another Benefice, and continuing so two Years, the King made Title to present by Lapse. Adjudged that the Pardon extended not to this Case; for that it was never the Intent of it to *dispense with Pluralities*, and the Defendant is not an Incumbent within the Proviso of the Exception, for he is an Incumbent

Het 124.
S. C.—Jo.
334. S. C.

bent by *Usurpation and Denial*. Cro. Car. 354. Hill. 9 Car. Per all the Justices in the Exchequer Chamber, except two. The King v. the Archbishop of Canterbury and Prytt.

9. A. being indebted to B. the King's Receiver, gave him a Bond, upon which his Lands and Goods were extended; and afterwards upon Security given to abide the Order of the Court, the Goods of A. were restored, and for so doing A. and C. entered into a Recognizance; and upon Breach thereof Judgment was had, and a Writ of Error brought, in which there was a Nonsuit after the General Act of Pardon; and then, a Scire Facias being brought, the Defendant pleaded the Pardon thereto, in which were excepted all Recognizances, Obligations &c. entered into by any Receiver since the 25th March, 1640; and in another Clause *all Bonds taken in His late Majesty's Viceroyalty after 1642. for securing the proper Debt of any Receiver of the Revenue*, were likewise excepted. This Recognizance was held to be included within the Exception under the Word *Obligation*; for tho' an Obligation is not a Recognizance in Pleading, it may well be so within the Meaning of an Act of Parliament, and this was given in Limit of the Obligation entered into before, and is a Bond of Record; and so being both Obligation, it is in this Case the same Thing. Hard. 356. Mich. 16 Car. 2. in Scacc. The Attorney General v. Ward.

10. A Bill was filed by A. in the Exchequer against B. for Wages due to him, as an Officer under him in the Mint, B. having been made Master of the Mint by the Keepers of the Liberties of England, and thereupon entered into Articles with them for Payment of the said Wages. Upon the Restoration all Publick Debts and Securities were vested in the King, but became discharged by the Act of Oblivion, excepting *the Accounts of Persons who have received any of the Revenues &c. or any Hereditaments of the Crown, and all Securities entered into by any Receiver or other Accountant in the Court of Exchequer, and excepting any the Goods, Money &c. of the late King, Queen, or Person*. The Defendant pleaded the Pardon; and adjudged that this was a Case within it, and in taken out of it by any of the Exceptions; for the Exception of the late King and Queen's Goods extends only to such as they were *actually possess'd of*; and as to the Word (*Accountants*) that relates only to common Accountants in the Exchequer, whereas this is the Case of a particular Accountant in a Collateral Way; nor is this an Account of the Rents &c. of any *Hereditament* of the Crown, properly speaking, tho' it may be in a large Sense so called, but the Product of the Office, or Trade of the Mint. Per Cur. Hard. 371. Mich. 16 Car. 2. in Scacc. The Attorney-General v. Guerdon.

11. One G. in the Year 1659. was attainted of Murder, and executed; and it was found by Inquisition, that the said G. had lent 30 l. to the Defendant, and that the Defendant was indebted to the said G. for it. Whereupon a Scire Facias issued against the Defendant, who pleaded that she was not indebted to the said G. *Modo & forma prout*. And Hale Ch. B. held that the Act of General Pardon excepts only the Offence, and not the Forfeiture, but that that is pardoned. Hard. 421. Trin. 17 Car. 2. in Scacc. The King v. Margery Bernard.

12. Upon an Information against A. as Heir and Tertenant of the Lands of B. the King's Cofferer, for Monies received to the King's Use, the Defendant pleaded the Act of General Pardon 12 Car. 2. in which were excepted *all Duties, and other publick Duties, and all Loans, Grants &c. or other Grants for the late King's Use, and not discharged or discharged; and excepting all Offices in Debtors, Lands, and other Hereditaments, and all Grants, Loans, and other Grants of the late King, Queen, or Person*. Adjudged that this Account was pardoned, and not within any of the *Held 371. Exceptions, for the describing the late *King's Grants and Monies, relates only to Grants and Monies, and not to the Office of the Receiver.

from him; and otherwise the whole Pardon might be defeated by this Exception; nor is it within the other Exception; for a *Cofficer* is a Person of higher Rank than any that are named in the Act, and a Superior shall not be included where an Inferior is first named; and so the Plea was allowed per Curiam. Hard. 441. Pasch. 19 Car. 2. The Attorney General v. Palmer.

S. P. For

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in Strickland v. Warde.

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Pl. C. 387. cap. 37. S. 29.

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Pl. C. 387. cap. 37. S. 29.

13. If a General Pardon be with an *Exception of Murder*, yet it does not except a *Felo de se*, especially where no Inquisition was found till after the General Pardon. Sid. 150. Trin. 15 Car. 2. B. R. The King in Strickland v. Warde.

Murder, and consequently may seem naturally enough to come within the Exception, yet since the general Words of an Act of Parliament are to be expounded according to the common Use of them, and the Offences of Felo de se and Murder are generally understood as distinct Offences, and as such are distinctly treated by all Authors, who when they use the Word Murder, as signifying a certain Species of Offence, always mean by it the Murder of another; and farther, since there is greater Reason to except the Murder of another out of a Pardon, than that of a Man's self, because both the Law of God and Nature seem generally to require Blood for Blood, which can be applied only to the Murder of another, the Word *Murder* shall in such an Exception be taken only to signify the Murder of another. 2 Hawk. Pl. C. 387. cap. 37. S. 29.

A Suit was

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be in the Ecclesiastical

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Dilapidator himself,

to punish it as a

Crime against the

Ecclesiastical Law,

and to pardon it,

unless there were

Prosecution before

the Day aforesaid.

And so the Prohi-

bition was denied. 2 Vent.

216. Anon.

2 Vent. 216. Anon.

2 Vent. 216. Anon.

2 Vent. 216. Anon.

2 Vent. 216. Anon.

2 Vent. 216. Anon.

2 Vent. 216. Anon.

2 Vent. 216. Anon.

2 Vent. 216. Anon.

2 Vent. 216. Anon.

2 Vent. 216. Anon.

2 Vent. 216. Anon.

14. *Suits for Dilapidations* were excepted out of the Act of General Pardon of 2 W. & M. Seff. 1. cap. 10. *unless commenced and depending such a Day.*

and a Prohibition was moved for to stay the Suit, which was by the Successor against the Executor of the former Incumbent; but the whole Court, upon hearing Counsel, and Consideration of the Matter, conceived that the Parliament never intended to take away the Successor's Remedy for Dilapidations, for that was to ease the Executor of the Wrong-doer, and translate the Charge to the Successor. But they would intend this Exception of such Suits as might be in the Ecclesiastical Court against the Dilapidator himself, to punish it as a Crime against the Ecclesiastical Law, and to pardon it, unless there were Prosecution before the Day aforesaid. And so the Prohibition was denied. 2 Vent. 216. Anon.

15. Information in Nature of a *Quo Warranto*, and *Judgment per Nihil dicit*, and a *Capiatur pro Fine*: The Question was, Whether this was pardoned by the late Act? Holt Chief Justice delivered his Opinion, That an Interlocutory Judgment is not within the Exception of the Act; for by a *Judgment* is meant a *final Judgment*, it being coupled with *Sentence and Decree*, and a *Capiatur pro Fine* is only to bring them in to receive the Judgment of the Court; but this being a Matter of Right, viz. in a *Quo Warranto*, tho' the Fine be pardoned, yet the Continuance of the Crime is not. And he said he remembered a Case upon the Act of Parliament, in King William's Time, where the Fine for the Nuisance was pardoned, but not the Continuance of the Nuisance. He said likewise, that where Writs of Error say, *Si Judicium inde redditum sit*, it extends only to final Judgments, and so does the Exception in the Act of Parliament. And Powel, Powis and Gould were of the same Opinion; wherefore Judgment was given, that the Defendant should be ousted of his Office for committing the Offence, but that the Fine is pardoned. 11 Mod. 235. Trin. 8 Ann. B. R. The Queen v. Tyrrel and Barber.

16. *Marrying an Infant Ward committed by Order of Chancery*, and that *without the Privy of the Committee*, is a Contempt of the Court; but a General Act of Pardon coming afterwards, tho' with an *Exception of all Contempts* and Offences, for which any Prosecution was then depending, and which had been prosecuted at the Charge of any private Person or Persons, was held by Lord Ch. Parker to be pardoned, this Offence or Contempt ending only in the Punishment of the Party offending, and not in relieving or redressing the Prosecutor. Wms's Rep. 691. Pasch. 1721.

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Pl. C. 387. cap. 37. S. 29.

17. It has been holden, that a *Forfeiture due to the King by Force of a Conviction upon the Statutes 29 Eliz. 6 Pl. 5. and 3 Jac. 1. 4. Pl. 7.* shall not be taken to be within the Exception of a General Pardon, which *excepts all Forfeitures &c. converted to a Debt by Judgment.* Hawk. Pl. C. 16. cap. 10. S. 23.

18. It has been adjudged, That where a General Act of Pardon expressly pardons *all Petit Treasons*, but *excepts Murder*, it cannot be avoided by indicting one for Murder only, without the Word *Proditorie* &c. who has been Guilty of Petit Treason; * for the less Offence being included, and consequently drowned in the greater, cannot but be pardoned by a Pardon of it; and therefore the Exception of Murder in such a Pardon *must be confined of such Murder only as is specially so called*, and doth not amount to Petit Treason. 2 Hawk. Pl. C. 386. cap. 37. S. 19.

S. P.
2 Hawk. Pl.
C. 165. cap.
23. S. 19.

* (U. a) Charter of Pardon. *What Thing shall be pardoned by Pardon of other [Thing.]*

Vol 1-9 bis
See (R. a)

1. **I**f a Man be outlawed in Trespas, and the King pardons the Outlawry, yet the Fine remains, for this shall not pass by any general Word. † 7 D. 4. 17. b. ‡ 22 Aff. 47. *adjudged.*

S. a. ———
* N. B. There
is no (T. a)
— Br. Charters
de Pardon.

don, pl. 12. cites S. C. ———; Br. Charters de Pardon, pl. 5. cites S. C.

2. But Pardon of Trespas before Outlawry will bar the Fine. 7 D. 4. 17. b.

S. P. For
the Fine
shall not be

but where he is outlawed, or otherwise attainted. Br. Charters de Pardon, pl. 12. cites S. C.

3. If a Man outlawed at the Suit of the Party be pardoned of the Outlawry, yet he is not restored to his Goods *except*. 7 D. 4. 5. *mainten of Goods*, but only a Restitution to the Law. Br. Charters de Pardon, pl. 11. cites

S. P. For
Pardon shall
not give Resti-
tu- H. 4. 4. 5.

4. If a Man outlawed of Felony purchase a Pardon of the Outlawry, yet his Goods and Lands shall be forfeited. * 7 D. 4. 17. b.

In Error upon
Outlawry
purchased

upon Indictment of Murder, was assigned for Error, that at the Assizes the last period, *inquit et in fine* is, *ad Chancels and Possessors*; and prayed that the Outlawry be removed, and that he be restored to his Goods: And the Judgment was reversed; but he did not *residue his Goods*, and so that it did not appear by Record here, which was against the Opinion of Hank. Quere; for it seems that it *was* *by Writs of Repetition, and not by Writs de Pardon.* Br. Charters de Pardon, pl. 72. cites 9 H. 5. 14. 15. — * Br. Charters de Pardon, pl. 12. cites S. C.

5. If a Man bound in a Recognizance for Surety of the Peace kills a Man, and is pardoned of the Felony, yet he shall not be discharged of the Recognizance. 7 D. 4. 35. b.

6. If a Man be indicted of Felony, and *also of Treason*, and after he is outlawed of Felony, and then the King pardons the Felony, he shall not be arraigned of the Treason; for he cannot be dead but once. Per Causby; but Brooke says the contrary is held for Law. Br. Charters de Pardon, pl. 44. cites 6 E. 4. 4.

Br. Causby,
pl. 146. cites
S. C. per
Causby.

7. If three bring several Appeals of Robbery against W. M. and he is found Guilty at the Suit of the one, he shall not be arraigned at the Suit of the others. Per Suliard; but Mathiam contra; quere. Br. Causby, pl. 146. cites 6 E. 4. 4.

8. A Man *assured the Rector for the Death of a Man*, and was taken afterwards, and pleaded *the King's Pardon of all Felonies*; and was ill-served; for it did not make a *Merger of Offences*. Br. Charters de Pardon, pl. 23. cites 9 E. 4. 25.

9. One

6. Where a *Writ* was Agreed for an Offence *Tempore Parliamenti*, & the Offence was afterwards pardoned by Parliament, and then the Parliament ended. The *Deprivation* was utterly void, for the Parliament relateth to the first Day, and the Party need not sue to reverse the *Deprivation*. *Case* 41. *Trin. 27 Eliz. C. B. Fox's Case.*

v. Upon an Appeal to the Archdeacon Court, there was a *Remission* given for *S. P.* But it
deferring *Writs*, and 12 d. *Cyts*, and then came the General Pardon; *the Pardon*
and then the Defendant appealed to the Delegates, who affirm'd the last *the Court*
Sentence, with greater *Cyts*, not allowing the Defendant's Plea of the *in the App.*
Pardon. Adjudged that their *Cyts* given by the Delegates were not *remitted*
taken away by the Pardon, being for the *Unlawful* (which was subsequent *to the Pardon*)
thereto) and the *Original Offense* was pardoned. Winch. 125. Hill. 22
Jac. C. B. Davis v. Hawkins.

9. A. was libelled, and *condemned by the Ecclesiastical Court*, for *adultery* and *affinity* &c. &c. *by the Attorney and C.* and for this Offence was *put in the Stocks*, and *condemned to be Flogged in the Church &c.* On which A. prayed a Pardon, which was granted; For that by the *General Pardon* (which was upon the *General pardon*) the Offence was discharged, and consequently the Sentence and Fine which came after were void; and it was held per *Hutton J.* That if such an Offence charged on the Defendant were *remitted by the Pardon*, yet the Sentence and Fine in this Case being *void*, the Pardon shall be a Discharge thereof. *Car. Car. 113. Trin. 4 Car. C. B. Peel's Case.*

[illegible]

11. *It is further represented* That on Sept. 4, 1847, Capt. J. C. Caldwell, Then the Governor of the Territory of Utah, to which Territory the General Land Office usually has access, all the Indian Impressions were purchased and sold to John H. Young, the first of these were found in the Hands of one John H. Young. The goods were, *Eighty four Indian Impression* and *Twenty five* Indian Impression, *from the Indians*, and the same were sold to John H. Young for the sum of ten dollars; Turner, Ch. B. Hall, & at the Purchase of the same

the Pardon ; for he said the Importation was not unlawful, and by it there is no Offence against the Statute, but it is the Selling or Design to Sell which gives the Forfeiture ; but the other Barons seemed to be of the contrary Opinion, inasmuch as the Selling is not the principal Offence, but it is *Evidentia facti* that the Importation was to that Intent, and so the Importation being pardoned, the Goods should not be forfeited. And Thurland compared it to the Case where a Man is struck, and dies in a Week after, the Death shall have Relation to the Stroke. And Sawyer put the Case, Supposing these Goods had been seized, and then the King had restored them, or suppose the King had released to the Party, there they should never be forfeited by any After-Sale again, notwithstanding the Statute saith as often, and every Time they may be found &c. *Freem. Rep. 325. 326. Pasch. 1674. in Scacc. Harling v. Cannon.*

(U. a. 3) Private Pardon. To what the Words shall extend.

Br. Patents, pl. 102. cites S. C.

The King's Pardon of all *Misprisions, Offences and Contempts*, pardons an Offence against any Statute. By all the Judges in the Exchequer Chamber. Jenk. 111. pl. 17. cites 37 H. 6. 4.

But there was also in the Pardon *Omnimoda Demanda, Debita & Forisfact.*

Br. Prerogative, pl. 62. cites S. C.

So a Pardon of a Nuisance does not extend to the Continuance of the Nuisance after the Pardon ; for this Continuance is a new Nuisance, as the Inclosure is ; for this is a Depopulation continued. Jenk. 198. pl. 13.

S. P. Jenk. 234. pl. 9.—

1. IF the King pardons to the *Alienee of his Tenant, who holds in chief, All Alienations*, by this the Tenant cannot alien, but by this the Fine for Alienation is pardoned, notwithstanding that he did not pardon the Fine but the Alienation. Br. Charters de Pardon, pl. 26. cites 14 H. 6. 26.

2. Sheriff made a False Return, and the King *Ex mero motu, speciali Gratia & certa Scientia*, pardoned *all Misprisions, Offences and Contempts* ; after this Pardon was obtained, the Judges of B. R. fined him 100 l. for this false Return ; the Fine was estreated into the Exchequer, and the Sheriff was taken in Execution, and committed to the Fleet ; he sued a special Writ upon this Pardon in the Nature of an *Audita Querela*, comprising all this Matter, and returnable in the King's Bench. Resolved that the Patent by the said general Words pardoned the said Offence, and that because the Pardon preceded the setting of the Fine, therefore the Fine may be [is] discharged. After Judgment, and before or after Execution, the King's Pardon discharges the Debt or Offence, and Execution of it, and is pleadable against the King. Jenk. 109. pl. 10. cites 36 H. 6. 24. Quatermain's Case.

3. Information in the Exchequer for *Shipping of Wool to other Place than Calais*, against the Statute &c. the Defendant pleaded *Pardon of the King de setta Pacis*, which per Choke, is only Surety of the Peace, and all Actions which are *Contra Pacem*, and this Action is not *Contra Pacem*. Br. Charters de Pardon, pl. 24. cites 37 H. 6. 4.

And this is good. Ibid.

4. If the King pardons *Omnimoda Demanda*, yet *Inheritance is not pardoned, quia Rex* ; and yet in the Case of a common Person, Rent, Right of Entry, and every Thing which is implied in it is determined ; contra in Case of the King. Br. Releases, pl. 44. cites 6 H. 7. 15.

5. The King's Pardon of *all Offences and Misdeeds, contra formam quorumcumque Statutorum*, extends to the Offence of *Inclosures* against the Statute of 7 H. 8. but it does not extend to the *Continuance of the Inclosure after the said Pardon*, as of a Nuisance. Jenk. 198. pl. 13. cites 10 H. 8.

for this is a Depopulation continued. Jenk. 198. pl. 13.

6. If the *Heir* of the King's Tenant *within Age*, enters and takes the Profits, and the King pardons him all *Intrusions* ; this shall serve him for

for *Intrusions and Mesne Profits until Office found*, but not for the *Illices* afterwards, neither does it discharge him of Livery, but if he were of *full Age* when he so intruded, and obtains a Pardon of all Intrusions before Office found, this discharges him of Intrusion, Mesne Rates, and Livery. Jenk. 198. pl. 13. cites 10 H. 8.

Keilw. 198. b Mich. 8. cites it till the Date of the Pardon; but for all the

Time that he occupies after his full Age, he is chargeable to the King; but where Heir is of full Age at the Time of the Pardon, he shall go quit, because the King has no Title to intermeddle with the Land after the Pardon; and so a Diversity where the Heir is of full Age, and where within Age at the Time of the Pardon &c. quod nota. But the Reporter makes a Quere; for it seems that the Pardon made to the Heir, to whose Lands the King had once Cause of Wardship, shall discharge the Heir as well where he is of full Age, as where he is within Age at the Time of the Pardon; and that this Pardon countervails a Special Livery, and the Effect of a Special Livery is no other in Effect but *Licentia ingrediendi* &c.

7. A. purchased Land to him and Wife, and to his right Heirs; the Lands were held of the King in Capite; A. had no Licence; the King by a *Coronation Pardon* pardoned *A. Omnes Alienationes, Transgressiones & Offensas pro qualibet Alienatione sibi fact.* This Pardon pardons this Alienation; for the Word Alienation properly goes to the Fee, and a Coronation Pardon ought to have a favourable Construction. By all the Judges of England. Jenk. 222. pl. 67. cites 3 Eliz. D. 196. Sir Robert Catlin's Case. Such Pardon will not serve where the Husband purchases to him and his Wife for their Lives. Ibid.

8. M. was attainted in a Premunire, and the King pardon'd him *Omnes & singulas Transgressiones, Offensas & Contemptus.* And the Question was, Whether by this Pardon the Judgment in Premunire was released? And the Court, after giving M. some Advice to be more careful for the future, and to take Heed of running into such high Offences, allowed the Pardon. 2 Bulst. 299. Mich. 12 Jac. The King v. Sir Anthony Mildmay.

9. A. became bound to B. in a Statute of 10000 l. and after was found in Arrear to the Crown 22500 l. as Collector of the new Impost: Upon A.'s Death his Lands were extended for the King's Debt, which were afterwards granted by the King to J. S. in Trust for C. A.'s Heir; then comes the Act of General Pardon 13 Car. 2. wherein *all Accounts of Receivers, Collectors &c.* are excepted; but it is provided, that the Heirs, Executors &c. of Accountants shall not be charged, except for *Sums remaining on Accounts already stated.* C. conveys to D. and afterwards in the Exchequer pleads the Pardon in Discharge of the Crown's Debt, which is confes'd by the Attorney General, and Judgment given accordingly: Upon an Ejectment against the Executor of B. who had extended the Lands upon the Statute for the 10000 l. it was adjudged that the Word (*Accounts*) in the Exception of the Act of Pardon extended to *Sums due on Accounts stated*, as appears by the subsequent Proviso, in Favour of the Heirs &c. of the Accountants, tho' properly a Sum due on an Account is not an Account, as was adjudged on the Statute of Limitations on the Words (*Merchants Accounts.*) 3 Lev. 135. Travell v. Carteret. And it was further resolved, That this Debt to the Crown was not pardoned, notwithstanding the Act excepts the *Accounts of all Receivers which have received any Subsidies, new Imposts, or any Rents of K. Ch. I. after the 30th Day of Jan. 1642.* where-as this Mo-

ney was received, and the Account stated in 1638. for that the Words *after the 30th January 1642.* relate only to those next antecedent, viz. *Rents of King Charles I.* and the former Part of the Clause concerning the Accounts, shall be taken absolutely *without any Limitation to the Time*; and that for two Reasons. 1. Because the Rebels in the Year 1642. begun to sequester the Rents of the Crown. And 2dly Because the Rents of the King is the *last Antecedent*, to which that which follows ought to relate. Per three Justices against Levins J. 3 Lev. 135. Mich. 35 Car. 2 C. B. Travell v. Carteret.

(U. a. 4) Pardon. Good. In respect of the Words.
In Criminal Cases.

1. **A** MAN was convicted of Rattery at the Suit of the Party, which Party released him the Execution, and the King reciting the Attainder, pardoned him the Execution; and because he did not pardon the Felony by express Words, the Charter was disallowed. And so it seems that the Party by the Pardon of the Plaintiff shall not go quit, without Pardon of the King; quod vide. Br. Corone, pl. 24. cites 8 H. 4. 22.

Serjeant
Hawkins
says, It seems
to be laid
down as a
general Rule
in many Books,

That wherever it may be reasonably intended that the King, when he granted a Pardon of Felony, was not fully apprized both of the Heinousness of the Crime, and also how far the Party stands convicted thereof on Record, the Pardon is void, as being gained by Imposition on the King. And this is very agreeable to the Reason of the Law, which seems to have intrusted the King with this High Prerogative, upon a special Confidence that he will pardon those only whose Case, could it have been foreseen, the Law it self may be presumed willing to have excepted out of its general Rules, which the Wit of Man cannot possibly make so perfect as to suit every particular Case: And upon this Ground this Case was determined; but says that he was indicted by these Words, 'That he had slain a Man for having sued him in the King's Court, which Brooke in his Abridgment of the Case omits. 2 Hawk. Pl. C. 583. cap. 37. S. 8.

S. P. Br. Pa-
rents, pl. 15.
cites S. C.
per Strange.
—If a Man
be adjudged
for Felony,

and after the King pardons him all Manner of Felonies, this is not good, because he did not pardon all Executions of Felony. Per Choke J. quod non negatur. Br. Charters de Pardon, pl. 44. cites 6 E. 4. 4.

But if it had
been Perdon-
avimus R. W.
Et alios supra
de omnibus
Felonis fac-
tis &c. per
predictum
R. W. vel
per J. B. vel
R. C. vel per
alios &c. this
had been
good; for
this is several.

Br. Charters de Pardon, pl. 51. cites 22 E. 4. 7. — Serjeant Hawkins says it seems agreed, That the Pardon of A. B. and C. of all Felonies by them done, without adding, Or any of them, is void, because it supposes them jointly Guilty, and extends to no other but joint Felonies, whereas all Felony is several in each Offender, and cannot be joint. And the Year-Book of 22 E. 4. goes so far as to hold, that the Addition of the Words (Or any of them) will not help a Pardon beginning with such joint Words; but it is said to be authorized, and contrary to the Roll, and seems to be agreed not to be Law at this Day. 2 Hawk. Pl. C. 380. cap. 37. S. 24.

5. A. commits Treason or Felony; the King's Pardon of *all Offences* does not pardon Treason or Felony: The Law requires, in the Pardon of Capital Offences, a *particular Mention* of the Nature of the Crime, Ne Maleficia remaneant impunita, and the King be deceived. A General Pardon of *all Felonies* is good for any Felony, but not for Treason. Where a Felon is attainted, a Pardon of the Felony will not serve him without a Pardon of the Attainder also. Jenk. 197. pl. 5. cites 2 H. 8.

6. If the King pardons A. a Felony whereof he stands indicted, or indicted and attainted &c. and in Truth he is not indicted nor attainted &c. this is *Expressio falsi*, and makes the Pardon void 3 Inst. 238.

7. D. was indicted of Felony and Murder, and prayed to have his Pardon allowed. Per Withens and Holloway, *Felonica interfectio* is well enough, tho' *Murdrum* be omitted; but the Ch. J. contra. Manslaughter is *Felonica interfectio*, but at another Day (the Ch. J. being absent) it was allowed. Comb. 39. Mich. 2 Jac. 2. B. R. The King v. Davies.

8. One outlawed in an Appeal of Felony, prayed his Clergy, which was counterpleaded on Account of Bigamy &c. and afterwards purchased a Pardon, and sued Scire Facias against the Apellant &c. it is said, that the Pardon was not allowed, because it made no Mention of the Bigamy. 2 Hawk. Pl. C. 383. cap. 37. S. 8.

On the Debate of this Case it seems to be admitted, that the Pardon was not good, be-

cause it made no Mention of the Bigamy; and yet it is said, upon the Non-appearance of any one to maintain the Appeal, the Pardon was allowed; Ergo quere. 2 Hawk. Pl. C. 383 cap. 37. S. 8. Marg. cites 11 H. 4. 11. pl. 24 & 48. pl. 23.

(U. a. 5) Pardon. Good. In respect of the Words. In Cases not Criminal.

1. **I**N Attaint the Defendant pleaded Outlawry in the Plaintiff, Judgment if he shall be answered; The Plaintiff shew'd a Pardon, which was, *Ita quod stet rectus in Curia*; by which Finch said that therefore this is Conditional, and said that where the Defendant recovered against the Plaintiff in the first Action, because he has not made Gree to him, there the Pardon shall not serve. Fiish said the Pardon is not to be repealed by any, unless by you, and by our Suit we are to set aside all the first Record; and therefore did not allow the Saying of the Defendant, but the Charter of the Plaintiff was allowed. Br. Charters de Pardon, pl. 34. cites 30 Aff. 20.

2. A Man was bound in a Recognizance to keep the Peace, and the Defendant in Scire facias upon the Recognizance pleaded Pardon of the King of all Debts, Accounts and Recognizances, and the Pardon bore Date after the Recognizance, and before the Forfeiture; and the Opinion of the Court was, that the Pardon is good; as Release of an Obligation before the Day of Payment is good. Br. Charters de Pardon, pl. 17. cites 11 H. 4. 43.—Contra per Prifor. 37 H. 6. 4.

3. The King pardoned A. B. *omnimoda Debita* &c. *ex mero Motu* & *certa Scientia*; and after Debt was demanded against him in the Exchequer, as Sheriff of C. and he pleaded this Pardon, with Suggestion that he was Sheriff &c. And by some Justices the Pardon is not good; for it is not de Communi Gratia, nor General Pardon; and per Brian, Capi Debet juxta intentionem Regis, & non ad deceptionem Regis; and here he is not named Sheriff in the Pardon, and therefore it shall be intended his proper Debt, and not as Sheriff: But per Huttley Ch. J. and several other Justices, the Pardon shall serve the Debtee as Sheriff in the first Case, because it is *ex mero Motu* &c. for it is a General Pardon; but Pardon made upon Suggestion or *Ratione officii* shall be taken strictly according to the Letter; but after the Pardon aforesaid made to B. was allowed by the Barons of the Exchequer. Br. Charters de Pardon, pl. 36. cites 1 H. 7. 10.

The King pardoned J. N. (Esq; only) all Debts and Accounts, and he was Sheriff of N. and because it was *ex certa Scientia* & *mero Motu*, it was allowed without being named Sheriff Br. Charters de

Pardon, pl. 58. cites 2 R. 2. 7.—But if J. N. be indebted to the King by two Offices, and makes Executors, and dies, and the King pardons the Executors by their proper Names, *Omnia Debita sua*, and does not say Executores &c. this shall not serve them as Executors; per Brian. Ibid. Br. Charters de Pardon. pl. 36. cites 1 H. 7. 10.

4. If the King grants to the Merchants to transport Wool without paying Custom, this is a good Pardon of the Custom, per Justiciarios; contra if

the King licences the Merchants to export Wool, and retain the Custom, yet the Custom shall be charged; for this is no Pardon in it self; nota diversitatem inde bene. Br. Charters de Pardon, pl. 68. cites 1 H.

7. 34.

*But Pardon
of all Debts
is good by*

5. It was doubted if Pardon of the King of all Manner of Demands, be good or not. Br. Charters de Pardon, pl. 75. cites 11 H. 7. 10. the King; and yet this does not extend to Joint-debts that this Person and another owe; and per Fairfax, this Pardon does not extinguish Relief of the King. Ibid.——And per Brian and Vavisor, Pardon of the King of all Actions is not good. Ibid.

D 286. pl.
42 Trin. 11
Eliz. cites
S. C.

6. The Tenant of the King dies seised, and an Office is found accordingly, and the Heir had entered and taken the Profits before the Office found, and afterwards the King pardons all Intrusions; this is not good without these Words, *Issues and Profits &c.* Keilw. 88. b. Hill. 22 H. 7.

7. B. was indicted for Striking in Westminster-Hall near the Side of the Bar of C. B. sitting the Courts, and obtained his Pardon; and the Question was, if it should be allowed, because it varied from the Indictment; for the Indictment was, *Verberavit vulneravit & percussit*, and the Pardon omitted *Percussit*; and yet good per Cur. for it is in the Recital, and if no Recital had been, yet it should have been good, and *Vulner. is larger than Percussit*; but if it was not, there are general Words, viz. *Omnia Malefic. in Indictamento prædict. contin.* Sid. 211. Trin. 16 Car. 2. B. R. The King v. Bockman.

(U. a. 6) Pardon. Good. In Respect of the Time of the Making.

1. **A** Pardon made by E. 4. before he was actually King, was void even after he came to the Crown. Hawk. Pl. C. 36. cap. 17. S. 13.

2. If the Tenant of the King disseises me, and dies, his Heir within Age, and I enter, and the King pardons me all Entries upon him, and after Office is found for him, yet the Pardon is good; but Pardon after Office found is void; for he ought to traverse, or make Petition or Monstrans de Droit, Per Choke J. But Per Markham, the Pardon is not good before the Office nor after, which Brooke says does not seem to be Law; for it seems that it is a good Pardon. Br. Charters de Pardon, pl. 43. cites 5 E. 4. 4.

*But if he
pardons him
after the Of-
fice found, the
Fine for the
Entry is not*

3. Tenant of the King dies seised, and his Heir enters without Livery; Per Philpot, if the King pardons him before Office found of the Intrusion, then the Intrusion and the Issues are pardoned. Br. Charters de Pardon, pl. 48. cites 16 E. 4. 1. pardoned, per Philpot; but per Morton, After Office found he ought to have Special Pardon; quære. Br. Charters de Pardon, pl. 48. cites 16 E. 4. 1.

4. The Heir before Office found may distrain the Tenants, and Pardon made to him before Office of Intrusion found is good, but Office may be found after, notwithstanding the Pardon; but this shall not serve the King but for the Profits before the Office, per Huffle. Br. Charters de Pardon, pl. 39. cites 3 H. 7. 3.

Br. Patents,
pl. 51. cites
S. C.

5. The King may pardon Things which are in *Præsumptum Pecuniarium* before the Act done; contra of voluntary Escapes, Felony &c. Br. Charters de Pardon, pl. 41. cites 3 H. 7. 15.

(U. a. 7) *What the King may pardon.*

1. 2 *Id.* 3. 2. **C**Harters of Pardon for Manſlaughters, Robberies, Felonies, and other Treſpaſſes, ſhall not be granted but where the King may do it ſaving his Oath, viz. where one Man killeth another in his own Defence, or by a Miſfortune.

This Statute is confirm'd by 4 Ed. 3. 13. and 15 Ed. 3. 2. and 14 E. 3. 15.—The King

may pardon Murder, tho' he cannot diſpenſe with it; per Hales Arg. March 213. Trin. 18 Car. in Riekie's Caſe.—Holt Ch. J. ſaid there was as good Reaſon why the King ſhould pardon an Indictment of Murder, which is his Suir, as why the Subject ſhould diſcharge an Appeal, which is the Suit of the Subject; and that the King was by his Coronation Oath to ſhew Mercy as well as to do Juſtice. And he ſaid that this Statute of 2 E. 3. cap. 3. meant only that the King ſhould be fully inform'd before he pardoned any Felony; and that the Reaſon of that and other reſtrictive Statutes was, for that after the Statute of Glouceſter, cap. 9. upon a Murder done, it was uſual to apply to the Lord Chancellor, and obtain a Pardon by undue Means and falſe Suggeſtions, with general Words in it; and this was the Occaſion of thoſe reſtrictive Statutes, that Application be made to the King in Perſon, to the Intent the King himſelf might be apprisd of the Matter. 2 Salk. 499. Hill. 3 W. & M. B. R. The King v Parſons.—S. P. 4 Mod. 63. Mich. 3 W. & M. B. R. in Caſe of the King v. Anonymus.

Serjeant Hawkins, after reciting this Statute, and adding that it is confirmed by ſeveral ſubſequent Statutes, ſays, That there being no Precedent in the Regiſter of a Pardon of any other Homicide, but ſuch as is done either in Self-Defence, or by Miſadventure, or by Infants or Madmen, ſome have gone ſo far as to hold, that the King's Pardon of any other Homicide is not good, unleſs it be confirmed by Parliament, or at leaſt have a Non obſtante. But the Serjeant ſays this ſeems contrary not only to the general Tenor of the Books, which clearly admit the King's Power to pardon any Homicide in general, but alſo to the expreſs Purport of 13 R. 1. which by ſhewing in what Form the King ſhall make a Pardon of Murder, plainly allows that he has a Power to make it: Beſides, the ſame Reaſons hold as ſtrongly againſt the King's Power to pardon Manſlaughter as Murder, which yet he ſays he never knew diſputed. However, it ſeems reaſonable, that ſuch much at leaſt be allowed to follow from the Arguments above mentioned, that too great Caution cannot well be taken in the Grant of Pardons of any Homicide, that there be ſome ſuch favourable Circumſtances in Extenuation of it, as may bring it ſome Way within the Equity of the Caſes in the Regiſter, and theſe old Statutes. 2 Hawk. Pl. C. 385. cap. 37. S. 14.

2. In Appeal by the Party of the Death of his Father, the King cannot pardon the Execution; quod nota. Br. Appeal, pl. 150. cites 14 E. 3.

In Appeal of Death, Robbery, Rape &c. the King cannot

pardon the Defendant; for the Appeal is the Suit of the Party to have Revenge by Death, and whether the Defendant be attained by Judgment &c. or by Outlawry, the Pardon of the King ſhall not diſcharge the Defendant. 3 Inſt. 237.

Serjeant Hawkins ſays, A Pardon of the King will not be any Bar to an Appeal, except only where it is carried on at the Suit of the King after the Nonſuit of the Party, in which Caſe it may be barr'd by a Pardon, in the ſame Manner as an Indictment. 2 Hawk. Pl. C. 392. cap. 37. S. 35.

3. In Attaint by A. againſt the Party and the Petit Jury; againſt the Party to have Reſtitution; this the King cannot pardon; againſt the Petit Jury by the Common Law, that they ſhould loſe Liberam Legem &c. this the King may pardon, becauſe it is a Punishment exemplary to deter others, and tendeth not to the Reſtitution or Satisfaction of the Plaintiff. 3 Inſt. 237. cites 13 E. 4. 5.

*S. P. 2 Salk. 689. Paſch. - W. 3. B. R. The King v. Crosby.

4. The King cannot pardon the Duty of the Party. Br. Charters de Pardon, pl. 24. cites 37 H. 6. 4.

Br. Action Popular, pl. 3. cites S. C.

—Wherever an Act of Parliament gives a particular Intereſt, or Right of Action to the Party griev'd by the Breach of it, as the Statutes of Mortmain, which give an Entry to the next immediate Lord for an Alienation to a Corporation, the Statutes againſt Maintenance, Forcible Entries, Carrying Diſtreſſes out of the Hundred, Suffering one in Execution to eſcape &c. which give an Action to the Party griev'd by the Offence prohibited, it ſeems to have been always agreed, that no Charter by the King can be of any Force to bar the Right of the Party ground'd upon ſuch Statute, becauſe it is a ſettled Rule, that the King cannot prejudice the Intereſt of the Party. 2 Hawk. Pl. C. 390. cap. 37. S. 29.

5. And where the King grants to me all Fines and Amerciaments in ſuch a Place, the King cannot pardon them. Ibid.

Tho' the King has granted Fines

to a Corporation, he may however pardon the Offence. Reſolv'd per Car. Skin. 6-6 Hill 8 W. 3. B. R. The King v. Bowebank.

—*Be. Action Populaire*, pl. 4, cites S. C.

Contra, if it be after the Peace broken. 7. If a Man be bound in a Recognizance to keep the Peace, and the King pardons him, or releaseth before the Peace broken, this is not good. Br. Charters de Pardon, pl. 24. cites 37 H. 6. 4. per Fortescue.

8. Where a Tenth is granted to the King, and he assigns Tallies to his Creditors, and they shew them to the Collectors now the King is discharged, and the Collectors are charged to the Creditors; and therefore after this the King cannot pardon the Collectors, nor those of the Clergy who granted the Tenth; for it is compared there to a Grant of a Rent over with Attornment; quod nota. Br. Charters de Pardon, pl. 37. cites 1 H. 7. 8.

10. The King may pardon a Clerk *Convict remaining in the Bishop's Prison without making Purgation*, for this is all Temporal ; per Fineux Ch. J. quod nemo negavit. Br. Charters de Pardon, pl. 21. cites 15 H. 7. 9.

D. 201. b.
S. P. Dubi-
tatur. —————
In such a
Cafe the
Defendant
pleaded the
Queen's
Pardon,* and
prayed to
have it al-

1243

pears by the Statute of the 4 H. 7. 13. that Burning in the Hand was only to notify to the Judge hereafter, whether the Defendant has had his Clergy before, or not, and so no Part of the Judgment; for if it were, the King could not pardon it, because the *Præsumptum* has an *Interest* in the Judgment; and since the King has pardoned the Burning in the Hand, he thereby pardons the Imprisonment by Confession; for the 18th Eliz. provides, that after the Allowance of the Clergy and Burning of the Hand, the Party shall immediately be set at large; and if the Pardon, by discharging the Burning of the Hand, should prevent his being discharged, it would defeat the Intent of that Statute, and occasion a perpetual Imprisonment; and thereupon the Defendant was discharged — 3 Inst. 237. cites Trin. 43 Eliz. S. C. by Name of *Shugborough v. Buggins*, where Lord Coke says, It was resolved by the Justices, upon Conference between them, that the Queen might pardon the Burning of the Hand, for that it is no Part of the Judgment at the Suit of the Party Plaintiff in the Appeal, but is a collateral and exemplary Punishment inflicted by the Statute 4 H. 7. cap. 13. — But note, that this Case is reported Cro. E. 682. Trin. 41 Eliz. C. B. by the Name of *Shuckborough v. Buggin*, where it appears that no Judgment was given therein, but that the Court was equally divided, and that the Case at last ended by *Compromise*. — And in Mo. 51. S. C. by Name of *Stroborough v. Buggin*, it is said to be agreed that the King cannot pardon the Burning of the Hand in an Appeal, because it was at the Suit of the Party, and that thereupon the Matter was *compounded*, which is likewise confirmed by Raymond J. in his Reports 369. in *Cutter's Case*, who said he had examined Buggin's Case, and he held, that the Burning in the Hand was Part of the Judgment; for the Entry is, *Quod le Offender cauterizetur in manu sua leva*. — But Cro. E. 596. Mich. 16 Car. B. R. in Sir *Matthew Wint's Case*, the King pardoned the Burning in the Hand, and the Pardon was allowed — And 11 Mod. 254 Trin. 8 Ann. B. R. in Case of *Smith v. Bowen*, the Court was of Opinion that the Statute that gives the Clergy extended to Appeals, and that the Burning in the Hand being no Part of their Judgment, the Queen might pardon it, according to Buggin's Case. 5 Co. 50. And thereupon the Appellee was discharged without Bail, being pardoned by an Act of Grace.

Serjeant Hawkins says, It is holden by great Authorities, that if a Person be convicted of Manslaughter upon an Appeal of Death, the King may pardon the Burning in the Hand; for which this Reason is given by Sir Edward Coke, That it is * no Part of the Judgment at the Suit of the Party, but a Collateral and exemplary Punishment inflicted by the Statute of 4 H. 7. 13. But this is made a Quere by others; and the principal Case wherein it is said to have been resolved, is very differently reported, and was never adjudged; and the Ground laid down that the King may pardon it, because it is no Part of the Judgment at the Suit of the Party, (by which it seems to be admitted, that if it were Part of the Judgment the Law would be otherwise) seems rather to make against it than for it; for there are Precedents of express Judgments *Quod cauterizetur in manu sua leva*. Also it is admitted, That where a Defendant is to have a certain Imprisonment &c. at the Suit of the Party upon a Statute, the King cannot dispense with it, except in some special Cases, wherein it may be reasonably intended that such Imprisonment was given by Way of Satisfaction to the Publick Justice, in which Case it seems agreed, that the King may dispense with it, as it is said he may with finding of Sureties by one convicted on the Statute against Trespasses in Parks. But it seems doubtful whether the Statute of 4 H. 7. 13. which appoints the Burning of the Hand, can well admit of such a Construction, for the Words are, *Whereas upon Trust of the Privilege of the Church, divers have been more bold to commit Murder, because they have been admitted to their Clergy as oft as they have offended; for avoiding of such presumptuous Boldness it is enacted, That every Person not being in Orders, who hath once been admitted to his Clergy, be not again admitted thereto; and that every such Person content &c. shall be mark'd &c.* From whence it seems plain, that the Statute expressly intends such Marking as a Discouragement of the Offence; and it seems difficult to give a Reason why it should be construed to mean it only as a collateral, and not as a direct Punishment; neither does it seem a plain Reason, That because the Statute intended it as an exemplary Punishment, the King may dispense with it; for surely the Execution of an Appellee attainted of Murder, and the perpetual Imprisonment of a Clerk delivered to the Ordinary upon a Conviction on an Appeal, who could not make his Purgation, were also exemplary Punishments; and yet it is generally agreed, that the King never could dispense with them: And therefore upon the whole, this seems to be a Point that deserves to be farther considered. 2 Hawk. Pl. C. 393. cap. 37. S. 39. — * Lord Hobart, fol. 294. says, That it is no Part of the Judgment, or so much as in Nature of Punishment, but only a Mark to notify that the Party may have his Clergy but once. Ibid in Marg.

12. J. T. being a Copyholder to the Lord Cromwel of his Manor of 3 Inst. 171.
N. forged a Customary of the said Manor; and it was proved to be done cites S. C. —
wittingly, subtly and falsely, and to the Intent &c. And this was S. C. cited
held to be Forgery within the Statute 5 Eliz. and Judgment was given Cro. E. 682.
accordingly in the Star-Chamber; and after this Judgment the Queen Trin. 41
pardoned the Execution of the Corporal Punishment. And it was held by Eliz. in Case
of *Shuckborough v. Buggin*, by
Wray Ch. J. Saunders Ch. B. Harper and Manwood J. præter Barham Biggin, by
and Gerrard Attorney, that the Queen may pardon the Corporal Penance Popham,
which trenches in common Example &c. But Dyer, Southcote and who said it
Mounson e contra. D. 322. b. 323. a. Mich. 15 Eliz. in the Star-Cham- was good
ber. Taverner's Case. Law; for
the Suits in
the Star-

Chamber are by Information, which is properly the Suit of the Queen, and not of the Party; and therefore the Queen may pardon it, but not when he is convicted in an Action at the Party's Suit; and so

he said was the Opinion of divers Justices with whom he had conferr'd——But if one be attainted of Forgery in an Action upon the Statute of Forgery, the Queen cannot pardon the Punishment. Per Popnam. Cro. E. 682. Trin. 41 Eliz. C. B. S. C.

S. P. Hawk. 13. In all Cases depending between Party and Party in Court Christian, where the Suit is only *pro salute anime vel reformatione morum*, as for Defamation, or laying violent Hands upon a Clerk, or the like, there the Pardon of the King, is a Bar of the Suit; For the Suit is not to recover any Damages, or any other Thing, but only to inflict Punishment upon the Offender pro salute anime, which Punishment the King may pardon as well before as after the Suit commenc'd; for in Truth such Suits are only for the King, tho' they are prosecuted by the Party. Resolved 5 Rep. 51. a. Trin. 2 Jac. C. B. in Hall's Case.

of Cuddington v. Wilkins.——So of Suits in the Star Chamber preferr'd by any Subject against another, the King may pardon them; for tho' a Subject prosecutes them, yet the Suits are for the King, and to punish the Defendants for their Offences by Imprisonment and Fine &c. to the King. Resolved 5 Rep. 51. in Hall's Case.——S. P. 2 Hawk. Pl. C. 394. cap. 37. S. 41.——3 Inst. 238. cites S. C.——S. P. 10b. 82 Trin 13 Jac. in Case of Cuddington v. Wilkins.——So all Proceedings in the Ecclesiastical Court ex Officio, are for the King; therefore whatsoever the Suit is there the King may pardon them; for they are only to correct or punish the Party for the Offence, which the King may pardon, and not for the particular Interest of the Party. Resolved 5 Rep. 51. b. in Hall's Case.——S. P. 2 Hawk. Pl. C. 394. cap. 37. S. 41.——But if one libels for Tithes, or Contract of Matrimony, or for Legacy, or the like, where the Plaintiff has Interest and Property in the Thing in Demand, and Sentence be given for him for the Thing for which he libels, there the King cannot pardon this neither before nor after the Suit commenced. Resolved 5 Rep. 51. a. in Hall's Case.——S. P. 2 Hawk. Pl. C. 394. cap. 37. S. 42.

2 L. P. R. 14. Alice C. libelled against R. H. in the Court Christian for Defamation, for calling her *Whore*, and had Sentence, and Costs were taxed. Et decretum fuit quod predictus R. H. foret movendus & citandus ad solvend. expens. citra tale festum. Which Sentence the Defendant appealed from, and before the said Feast R. H. obtained a Pardon of the King, and thereupon obtained a Prohibition out of C. B. And it was resolved that tho' the Suit be for the King, and which the King may pardon, yet when Sentence is given, and Costs taxed for the Plaintiff, now the Plaintiff has a particular Interest in them by the Sentence, which the King cannot pardon, tho' Day be given for the Payment of them, as above. 5 Rep. 51. a. b. Trin. 2 Jac. C. B. Hall's Case.

Party, the Pardon shall not discharge them; but if the Pardon had been obtained before Sentence, there the Pardon had discharged all; for then the Court could not have proceeded to any Sentence of the Principal, and by Consequence not of Costs, which are only Accessary. 5 Rep. 51. a. b. Hall's Case.——It was also resolved, that tho' the Defendant had appealed, by which the Sentence to divers Purposes (by Opinion of the Doctors of the Law Spiritual) is suspended, as appears in 2 H. 6. Tit. Gard. 118. 2 R. 2. Tit. Quare Impedit 143. 1 H. 7. 12. 2 Mir 105. Yet by the first Sentence the Party (notwithstanding the Appeal) has an Interest in the Costs, which cannot be discharged by the Pardon of the King; and therefore as to this Purpose, the first Sentence is not suspended by the Appeal. And after Consultation was granted for the Costs. Ibid.

Vaugh. 333. 15. The King cannot pardon the not repairing a * Bridge or Highway, because the Subject has an Interest in them. It is true he may † pardon Fines for the Time past, but not for the Time to come, for the Offence itself cannot be pardoned; but for the Time after the Offender shall be fined. And so in Case of Depopulation. 12 Rep. 29. 30. Trin. 5 Jac. Anon. cannot pardon a common Nuisance.——† Br. Charter of Pardon, pl. 24. cites 37 H. 6. 4.——S. P. 3 Inst. 237.——So of Nuisances in the Highway, they cannot be pardoned till removed, tho' they are only *Multa Prohibita*. But the Fine or Punishment imposed for the Doing may be pardoned. So of a *Water-course diverted*; per Vaughan Ch. J. Vaugh. 333.

Serjeant Hawkins says, That while a *Publick Nuisance* continues unreform'd, it seems agreed that the King cannot wholly pardon it, because such Pardon would take away the only Means of compelling a Redress of it. But it has been holden by some, that a Pardon of such Offence will save the Party from any Fine for the Time precedent to the Pardon. 2 Hawk. Pl. C. 391. cap. 37. S. 33.

16. Both the Damages and Imprisonment in Trespas upon the Statute West 1. cap. 20. concern the Plaintiff; and therefore the King's Pardon cannot

cannot dispense with them; but the *Ransom*, the *finding Surety*, and the *Forfeiture of the Realm*, are Punishments exemplary, and concern the King; and therefore he may pardon them. 2 Inst. 200.

17. M. was impeached by the House of Commons, and by Judgment in the House of Lords, was disabled to hold any Spiritual Preferment. The King afterwards, under the Broad Seal, pardoned him all Treasons, Felonies, Disabilities &c. but without any Recital therein of the Judgment in Parliament against him. He was afterwards made Bishop of St. Asaph. It was argued, whether or no this Disability is pardonable by the King? This Point was not adjudged; but see the Arguments Pro & Con. Hard. 154. to 157. Pasch. 1659. Thorowgood v. Herbert.

18. P. being convicted of Murder, obtained his Pardon, and being brought to the Bar, pleaded it, and produced his Writ of Allowance, and the Pardon had in it the Word *Murdrum*. And it was held by the whole Court, that this Pardon was good, and ought to be allowed; for that the King might at the Common Law have pardoned Murder, and that appears by those very Statutes which limit his Power in that very Particular; and the Drift of those Statutes are no more than that the King should not be surprized by pardoning it by general Words; and therefore since the making of those Statutes, a Pardon of Felonies &c. would not extend to pardon Murder without a *Non Obstante*; but if the King would recite the particular Fact, as he had done here, the Pardon would be good without a *Non Obstante*: Therefore it seems a Pardon in general Words was good, without reciting the Fact and Proceedings particularly, as in this Case the Indictment, Conviction and Attainder were all recited. Freem. Rep. 501. 502. Mich. 1691. Parsons's Case.

19. Holt Ch. J. took this Difference, *Where the Disability is only the Consequence of the Judgment*, the King may pardon it, but *where the Disability is Part of the Judgment itself*, the King's Pardon will not take it away; therefore * if a Man be convicted of Perjury on the Statute, the King's Pardon will not restore him, for it is not a Consequence, but Part of the Judgment, viz. Quod impoterum non sit receptus ut testis. But a Pardon by Act of Parliament will restore him in that Case; quod nota. Quære of a Perjury at the Common Law; and if the Law be not the same; for there the Disability is only by Consequence, and not Part of the Judgment. 2 Salk. 689. Pasch. 7 W. 3. B. R. The King v. Crosby.

* If a Man be convicted of Perjury at Common Law, the King may pardon him, but if upon the Statute he cannot; per Holt Ch. J. Carth. 422. in Case of the King B. R. S. C.

v. Greep.—2 Salk. 514. Mich. 9 W. 3.

20. Where *Beheading* is Part of the Judgment, as in Case of High Treason, the King may pardon all the rest, and consequently in such Case the Judgment may be well executed by Beheading only. 2 Hawk. Pl. C. 463. cap 51. S. 5.

(U. a. 8) Pardon. Obtained how. Suggestion, and Proceedings.

1. Pardon was pleaded, that the King for his Service done in Gascoigne pardoned him; and it was allowed; but he was detained till it was certified whether he did such Service there, or not. And so see that the Consideration upon which the Pardon is obtained is material. Br. Charters de Terres, pl. 74. cites Itin. Canc. 6 E. 2. 7.

2. 27 E. 3. Stat. 1. cap. 2. Pardons which have not in them the Suggestion whereupon they are granted, and also the Suggestors Names, shall be void; so are those likewise which are granted upon false Suggestions.

Because Kings had been deceived by false Suggestions,

Suggestion, and had thereupon dispensed with former Statutes, with a Clause of Non-Obstante inserted in the Pardon, therefore this Statute was made. Arg. 4 Mod 62. Mich 3 W. & M. B. R. in Case of the King v. Anonymous

Lord Coke says, The Party who does not inform the King truly, is not worthy of his Grace and Forgiveness; and therefore either Supplicatio veri or Expressio falsi avoids the Pardon. 3 Inst. 230.

H. and others were indicted of Murder, and pleaded a Pardon, which recited all the Proceedings upon the Indictment; and then the King was informed, that there was no Evidence given that there was any Malice prepened in them, in other Manner than by Construction and Implication of Law, and for that the King pardoned the Killing and Felony &c. but no Word of Murder was in it but by Description; and the Court were troubled to hear such a Suggestion in the Patent, because they knew the contrary to be true; and therefore they said that upon such a Pardon a Scire Facias might be brought 7 Years hence, and they might be hang'd notwithstanding this Pardon; and therefore they advised H. to procure a better Pardon: And Windham J. said, that the Suggestion of the Pardon might have been grounded on the Merits of the Prisoners &c. but upon this Pardon the Prisoners had not produced any Writ of Allowance; and therefore the Pardon was not allowed, but their Execution respited till another Day, at which Day they produced a Patent without any Suggestion at all, and a Writ of Allowance, but the Date was mistaken, and did not agree with the Writ; and therefore Execution was respited over. Raym. 13. Patch. 13 Car 2 B. R. Howard's Case.—Sid 41. S. C.

3. 5 H. 4. 2. *If an Approver commit Felony after he is pardoned, he that procured his Pardon, shall forfeit 100 l. whose Name shall also for that Purpose be inserted in the Pardon.*

4. If a Man be arraigned of Murder, and it be found that he killed the Party *Se Defendendo*, he ought to sue a *Certiorari* to remove the Record into the Chancery; and upon the Removal thereof to have his Pardon. F. N. B. [247] (F.)

5. And if a Man be attainted in Assise of Novel Disseisin, before the Justices of Assise, of a *Disseisin with Force*, and be afterwards outlawed for the King's Fine, if he will have a Pardon of the Outlawry, he ought to have a *Certiorari* directed to the Justices of Assise, to certify the King in his Chancery the Tenor of the Record of the Assise, and also another Writ to the Justices, to certify the King in his Chancery whether the Defendant in the Assise hath yielded himself to Prison, and hath satisfied the Party his Damages. And if the same be so certified in the Chancery, then upon that Certificate he shall have his Pardon of the Outlawry. F. N. B. [247] (G.)

6. And if a Man be condemned in C. B. in Debt, and outlawed upon the same, then before he shall have his Pardon, he ought to yield himself to the Prison of the Fleet, and satisfy the Party; and the Record of his Condemnation, and of the Satisfaction, ought to be certified by *Certiorari* unto the King in his Chancery, and thereupon he shall have his Pardon; and that is by the Statute 5 E. 3. cap. 12. F. N. B. [247] (G.)

7. And if a Man be outlawed severally, at the Suit of three several Persons in several Actions in which he was condemned, he ought to sue a *Certiorari* to remove the Tenor of those Records and Process into the Chancery, and also to have a *Certiorari* to the Justices of the Common Pleas, if the Suit be there, to certify the King in Chancery whether he hath yielded himself to the Prison of the Fleet, and hath satisfied the Parties, and when the Chief Justice hath certified the same into Chancery, then he shall have his Pardon for the Outlawries, and not before. F. N. B. [247] (G.)

See (U. a. 10)

(U a. 9) Pardon. Allow'd in what Cases.

But where Baron and Feme were outlawed; and the Baron purchased Charter of

Pardon. It was held that he may say that the Feme is dead, or that he had no such Feme, and shall have his Charter allowed; for he cannot have it allowed without bringing in his Feme, without such special

1. **W**HERE the Baron is Outlaw'd, and the Feme goes without Day, and the Baron purchases Pardon and Scire Facias thereupon, he shall not have it allowed without bringing in his Feme. Per Thorp. Br. Charters de Pardon, pl. 6. cites 40 E. 3. 34.

cial Matter shewn. Br. Charters de Pardon, pl. 64. cites 13 E. 4. 5 — But where the *Baron and Feme* are outlawed, and *she appears and shews Charter of Pardon*, and the Baron does not come, the Charter shall not be allowed, because she cannot plead without the Baron; but the shall go at large; nota. Br. Charters de Pardon, pl. 18. cites 11 H. 4. 89. — Br. Baron and Feme, pl. 36. cites S. C.

2. In Formedon the *Tenant pleaded Outlawry* in the Demandant, and he *imparl'd*, and the next Day brought *Charter of Pardon*, bearing *Date after his Imparlance*, and the *Tenant said that the Charter is upon Condition* that he sue against C. D. at whole Suit he was outlawed, which he has not done, Judgment &c. and yet because the Demandant is now at the Law, the Opinion of the Court was against the Tenant; by which he vouch'd. Br. Charter de Pardon, pl. 7. cites 44 E. 3. 27.

3. 13 R. 2. 1. In a Pardon the Offence committed shall be specified, otherwise it shall not be allowed.

If the Offence pardoned be afterwards found Wilful Murder; the Pardon shall not be allowed.

D. was indicted of Murder, and obtained a General Pardon of all

Murders, Robberies, Felonies &c. Non obstante the Statute of 13 R. 2. or any other Statute. And the Court inclined that this Pardon should not be allowed; for after the said Statute a general Non obstante would not serve, without Recital of the Effect of the Indictment upon which he is convicted, to the Intent that the King might be apprized of the Offence. And tho' it was the Opinion in Ricabill's Case, that the King could not pardon Murder, yet it has never been doubted either before or after, but that the King could pardon it, with a special Recital of the Fact and Non obstante; but without such Recital the Pardon is not good. And they directed that it should be argued for the Prisoner, if he would; but he perceiving the Opinion of the Court, endeavoured to obtain a new Pardon with special Words. Sid. 366. Trin. 20 Car. 2. B. R. The King v. Dudley — A general Non obstante, without a particular Recital of the Crime for which the Party is convicted, is not good since the making of the Statute of R. 2. but at the Common Law, both before and since that Statute, the King may pardon Murder, with special Recital of the Fact, Non obstante that or any other Statute. Per Cur. 4 Mod. 63. Mich. 3 W. & M. B. R. The King v. Anonymus.

4. A Man was attainted at the Suit of the Party of Robbery, and the Party pardoned him the Execution, and the King, by Charter which recited the Attainder, pardoned the Execution; and because no Mention was express'd of the Felony, therefore it was disallowed; quod nota. And so it seems that he shall not escape by Pardon of the Party only; and often where the Party will not prosecute the Suit, the Party shall be arraigned upon the Declaration for the King. Br. Charters de Pardon, pl. 13. cites 8 H. 4. 22.

2 Hawk. Pl. C. 384. cap. 37. S. 12. cites S. C. But the Serjeant says, It does not appear how this Pardon was pleaded, nor to what

Purpose it was attempted to be made Use of, nor how far, or in what Respect it was disallowed; and therefore tho' some Books seem to hold generally upon the Authority of this Case, that such a Pardon is no Way good, yet the Serjeant says he does not well see how any more can be proved from it than this, That it shall neither amount to a Pardon of the Felony it self, nor of any other Consequence of the Attainder, besides the Execution. But he says it seems difficult to give a Reason why it should not well pardon the Execution, since the King does not appear to be any Ways deceived; and it has been clearly adjudged that the King may, if he think fit, pardon the Execution, and no more.

5. Scire facias shall not be granted for the Defendant against the Plaintiff in Appeal upon the Pleading of the Pardon of the King after Conviction and Judgment, if he does not shew Release, or such like; per Huls; quod non negatur. Br. Scire facias, pl. 73. cites 11 H. 4. 16.

6. Felon shall not be suffered to relinquish a General Pardon by Act of S. P. For Parliament, and to plead to the Felony; per Cur. But yet he shall answer of the Goods, but they will not arraign him of the Felony. Br. Charters de Pardon, pl. 16. cites 11 H. 4. 41.

For every one shall take Notice of the Act of Parliament.

Br. Corone, pl. 30. cites S. C. — Where Felons are pardoned by Act of Parliament, there the Justices assist in the Execution, because it is a general Act; so that if a Prisoner will plead Not Guilty, yet they ought to surcease to arraign him, and allow the Pardon; quod nota. Br. Charters de Pardon, pl. 1. cites 26 H. 8. 7. — Br. Parliament, pl. 1. cites S. C. — S. P. Tho' he be so far from pleading it, or praying the Benefit of it, that he does all he can to waive it. 2 Hawk. Pl. C. 397. cap. 37. S. 61. — Serjeant Hawkins says he takes it to be agreed, That a General Pardon by Parliament cannot be waived, because no one by his Admittance can give a Court a Power to proceed against him, when it appears there is no Law to punish him. 2 Hawk. Pl. C. 390. cap. 37. S. 58.

Jenk. 169. 7. If *Appeal be without Day by Demise of the King*, there, if the King
 pl 29. cites pardons the Defendant, and the Plaintiff does not bring his Re-attachment
 2 H. 7. Fitz. within the Year to revive the Appeal, the Pardon shall be allowed. Br.
 Re-attach- Charters de Pardon, pl. 69. cites 2 H. 7. 10.
 ment 13. S. C. and
 addis, That this Pardon shall be allowed without awarding a *Seire facias* against the Appellant; for it ap-
 pears on Record, that the Appeal is extinct, and it would be in vain in this Case to award a *Seire facias*
 by the Justices of both Benches. Lex nil facit frustra.

8. H. was convicted of *Manſlaughter*, and had his Clergy, and pleaded
 his Pardon, whereby the *Burning in the Hand* for the Manſlaughter, and
 all other Felonies by him committed, Et alia Malefacta before the 8th
 July laſt were pardoned; and there was a ſpecial Clauſe that he ſhould not
 find Surety for his Good Behaviour; and the Pardon bore Date 31ſt
 October laſt; and tho' there were divers Mildemeanors committed by him
 after the ſaid 8th July, for which he deſerved to be bound to the Good
 Behaviour, yet he had his Pardon allowed, and was diſcharged from
 finding Sureties &c. Cro. C. 596. Mich. 16 Car. B. R. Sir Matthew
 Mint's Caſe.

Raym. 13.
 S. C.

9. H. and others were indicted of *Murder*, and found Guilty, and
Judgment was given, but Execution was ſuſpended. And after they were
 brought to the Bar, and demanded what they could ſay why Execution
 ſhould not be done; and they pleaded Pardon of the King ſub Magno Si-
 gillo; and the Court reſuſed to allow it, becauſe there ought to have been a
Writ de Allocanda perdonatione directed to the Juſtices: And Mallet J.
 ſaid, The Reaſon why ſuch Writ ought to be directed was, becauſe it was
 the Warrant which remained in Court for the Juſtices to allow the Pardon.
 And after at another Day the Pardon was read to the Court, and H. had
 brought a Writ directed to the Juſtices to allow it; and upon reading
 the Pardon, the Court ſaid they would be adviſed; and they ſaid that
 the Suggestions in it were falſe, and therefore they would ſtop the Allowance.
 And Twiſden J. ſaid, that in the Time of Hide Ch. J. an Allowance of
 a Pardon was ſtopp'd, becauſe there was a Non Obſtante that the Party
 ſhould not find Surety of the Peace. Sid. 41. Paſch. 13 Car. 2. B. R.
 Howard's Caſe.

See (U. a. 9)
 (U. a. 13)

(U. a. 10) Pardon. Allowed, How.

S.P. 2 Hawk.
 Pl. C. 398.
 cap. 37. S. 66.

1. **N.** G. was indicted of the Death of R. Anno 13. E. 2. and he ſhewed
 by Record that R. was dead Anno 9 E. 2. and ſhewed Pardon of
 his Death teſted 12 E. 3. and becauſe it might be that two R.'s were
 killed, therefore Scrope awarded Inqueſt of Office to inquire if there was
 found any R. Anno 13. after the Pardon; and it was found Quod non,
 by which he went quit, and the Pardon allowed; quod nota; notwith-
 ſtanding great Variance; quod mirum mihi. Br. Charters de Pardon,
 pl. 29. cites 3 Aff. 15.

2. Charter of Pardon was granted to a Man who was outlawed at the
 Suit of the Party upon *Actiō de Muliere abducta cum bonis Viri*, becauſe
 the Plaintiff came and confeſs'd of his own Free-will; but in B. R. when
 they came there, they were in Doubt to allow it, becauſe the Party
 came into Chancery to confeſs of his own Free-will, without *Seire facias*
 or Day in Court, and therefore they doubted if they ſhould award *Seire*
facias now in B. R. for it does not appear if he be the ſame Perſon, or not;
 and yet at laſt they allowed the Charter, and the Accuſatory had not
 thereof Advantage; quod nota: The Reaſon ſeems to be in aſmuch as all
 are Principals in this Action. Br. Charters de Pardon, pl. 35. cites 42
 Aff. 16.

3. He who is outlawed, and has Charter of Pardon, shall not compel the Plaintiff to Count against him, tho' he be ready at the Bar; because he has not Day in Court, and therefore was compelled to sue Scire facias. Br. Charters de Pardon, pl. 8. cites 46 E. 3. 15. Br. Scire facias, pl. 2. cites S. C.

4. Several were outlawed in Appeal by Feme, of the Death of her Husband, and the one came with Charter of Pardon of the King, and had Scire facias against the Plaintiff, and was returned warned, and did not come, by which he went quit; and after another came with such a Pardon, and went quit by the first Default of the Feme; for in this Case they are attainted by the Outlawry, and shall not plead upon the Original, and nothing remains but to be put to Execution. Br. Charters de Pardon, pl. 14. cites 9 H. 4. 1. But Ibid. pl. 47. cites S. C. 11. 4. 13. and 9 H. 4. accordingly. Contra, That in BR. a Feme brought Appeal against her, at

whose Suit they were outlawed, and one sued Charter of Pardon, and had Scire facias against the Feme, which was returned served, and she did not come, by which he went quit; and another sued Charter of Pardon, and he was compelled to have another Scire facias per Cur; quod nota. — And agreeable hereunto is Serjeant Hawkins, who says that the second shall take no Advantage of the Appellant's Default on the first Scire facias, but must sue out his Scire facias &c. in the same Manner as if there had been no such Default. 2 Hawk. Pl. C. 193. cap. 37. S. 38. cites in Marg 1 H. 4. 1. pl. 2. Fieri Scire facias 63 but says that Br. Charter de Pardon, pl. 14. in the Abridgment of the same Case holds the contrary.

5. But contra in Trespass; for the second shall have Scire facias upon his Charter, because they may plead upon the Original. Br. Charters de Pardon, pl. 14. cites 9 H. 4. 1.

6. It was said, that if Writ of Allowance of a Charter of Pardon of Felony be shewn to the Justices, and not the Pardon it self, this shall not serve. Br. Charters de Pardon, pl. 42. cites 5 E. 4. 132. Contra where the Pardon it self is shewn, but no Writ of Allowance Ibid.

7. Debt by the King upon an Obligation, the Defendant pleaded Not his Deed, and found against him by Nisi Prius, and before the Day in Bank the King pardoned him; he cannot plead this by Attorney; for by the Judgment the Warrant of Attorney of the Defendant is expired; and therefore he appeared in Person, and pleaded it in Person, and he pleaded it to the Execution without Day in Court; for if it was against a common Person, he might have Scire facias ad cognoscendum Factum, or Audita Querela, and make him give Day in Court, and then to plead his Release; but such Actions, nor any others, do not lie against the King. Br. Charters de Pardon, pl. 4. cites 34 H. 6. 3. & 50. and 35 H. 6. 1. 25. Br. Attorney, pl. 11. cites S. C.

8. Appeal of Robbery; the Defendant was outlawed, and got Charter of Pardon and Scire facias against the Plaintiff in the Appeal returnable &c without shewing Release of the Plaintiff; and well; for it is usual without shewing Release. Br. Charters de Pardon, pl. 59. cites 2 R. 3. 8. And if the Party be returned warned, and does not appear,
the Pardon shall be allowed. Ibid. — And in this Scire facias the Plaintiff shall not make Attaincy against her who is outlawed. Ibid. — Contra upon Issue of Bigamy. Ibid.

9. Note, by the Opinion of all the Justices, where a Clerk convict has Charter of Pardon, he ought to have special Writ, rehearsing all the Matter, and the Pardon directed to the Ordinary, to make him come before the Justices to have his Pardon allowed; quod nota: and Clerk convict or attaint shall be enabled by Pardon, per Fineux; quære of Clerk attaint. Br. Charters de Pardon, pl. 27. cites 21 H. 7. 31.

10. If one have a Charter of Pardon for Felony committed by him, the Court ought to allow it upon the Prayer of the Party that hath it; but he must produce it at the Bar, and pray upon his Knees that it may be allowed. 13th November 1650. B. S. for if he produces it not, the Court cannot take Notice of it, and if he pray not the Allowance of it, the Court cannot tell whether the Party do accept of the Benefit of it; and he does it on his Knees to express his Thankfulness for the Mercy afforded him by the Pardon. 2 L. P. R. 271. Tit. Pardon.

11. A Pardon of Felony with a Clause of Transportation was allowed, and the Party discharged *without finding Sureties*; but per Astry, the usual Course is to insert the Clause for finding Sureties to transport himself within such a Time; but per Cur. he ought to transport himself within the Time at his Peril; and therefore it was allowed &c. Comb. 16. Pasch. 2 Jac. 2. B. R. Anon.

* A Man outlawed of two several Felonies two several Years was taken and compell'd to answer to both, and pleaded Pardon of them;

and because he found Surety according to the Statute 10 E. 3. de bene gerendo, and after made an Affray upon J. N. the Pardon was void, and another Judgment was given upon him, that he should be Hang'd by the Neck; and he was executed. Br. Corone, pl. 133. cites 3 H. 7. — This seems to be Clark's Case cited Mo. 466. pl. 662. in Cole's Case, where one indicted of Burglary [and convicted] was afterwards guilty of a Breach of the Peace, and upon suggesting the same to the Court, and praying Execution to be done upon him, it was said by Ive Clerk of the Crown, that ~~Talhidon~~ was hang'd in the Queen's Time for the like Cause, after Pardon; and that the Pardon was conditional, viz. Ita quod se bene gesserit versus cunctum Populum Dominæ Reginæ. Mo. 466. Pasch. 39 Eliz.

13. If one who appears to be *attainted of Felony*, whether by Outlawry or otherwise, on an Appeal carried on at the Suit of the Party, get a Pardon from the King, he must sue a Scire facias against the Appellant, before the Pardon shall be allowed, unless the Appellant appear gratis, and confess that he will sue no farther &c. 2 Hawk. Pl. C. 392. cap. 37. S. 35.

(U. a. 11) Pardon. Allowed at what Time.

1. **U**PON the first Nihil returned upon Scire facias upon Charter of Pardon of Outlawry, the Plaintiff shall not be received to Count; contrary upon the second Nihil. Br. Scire facias, pl. 45. cites 48 E. 3. 1.

General Pardon was pleaded to discharge an Outlawry after Judgment, and not allowed till the Parties were agreed. Toth. 136. cites Tr. 1590. Weekes v. Newborow.

2. A Charter of Pardon of Felony being shewed to the Court, shall be allowed after Judgment upon an Indictment, and Execution shall not be done. De Vita Hominis nulla est cunctatio longa. Jenk. 137. pl. 82. cites 21 E. 4. 72.

3. The Court refused to allow a Pardon till the Prisoner had paid his Fees, scil. Gloves to the Judges, and also to the Officers, according to Sir John Bell's Case. 4 E. 4. 10. b. And the Clerk said that the Fees were ready, upon which the Pardon was read. Sid. 452. Pasch. 22 Car. 2. B. R. The King v. Webster.

Before that the Defendant in Mesne Process can have the Benefit of this Pardon,

he must pay Costs of the Outlawry to the Plaintiff, tho' there is no Mention of any Thing but his appearing and putting in Bail. 2 Vent. 210. — And Pollexfen Ch. J. said, that the Practice had been so upon the General Act of Pardon 25 Car. 2. 5. And yet in that Statute the Clause concerning Outlawries is to the same Purpose, and no Mention made of the Costs of the Party. Ibid

5 A Pardon for Treason cannot be pleaded until the Prisoner be charged with the Indictment for the Offence committed; for before he is charged by the Indictment, it doth not appear to the Court that he is the Person that is pardoned by the Pardon. 2 L. P. R. 270. Tit. Pardon.

6. Where a Pardon of the felonious Killing of J. S. has been pleaded to an Indictment of Manslaughter by the Coroner's Inquest, the Court in Prudence has refused to allow it till the Fact has been found Manslaughter only by a Jury directed by a higher Court. 2 Hawk. Pl. C. 386. cap. 37. S. 18.

(U. a. 12) Pardon. Allowed upon what Return to the Scire facias.

1. **I**N Account, the Defendant was outlawed, and got Pardon, and had Scire facias against the Plaintiff, who was returned Nihil, and the Pardon was allowed upon a Nihil returned, and he went quit. Br. Return de Briefs, pl. 109. cites 21 E. 3.

Br. Charters de Pardon, pl. 5. cites 40 E. 3. 1. says, It is agreed that the Plaintiff shall be returned warned, or returned twice Nihil, or otherwise the Charter shall not be allowed, and that upon two Nichils, or one Garnishment of all the Plaintiffs, it shall be allowed.

2. *Trespass by three, the Defendant was outlawed, and sued Charter of Pardon and Scire facias against the Plaintiffs, the Sheriff returned one warned, and the other Nihil; and the Defendant prayed Allowance; & non allocatur; for two are not warned, nor is there more than one Nihil returned, but he shall have Scire facias alias, and there, if the Sheriff returns Nihil again, the Charter shall be allowed, for he who was warned did not come; Note, that two Nichils countervail Scire feci.* Br. Scire facias, pl. 14. cites 40 E. 5. 1. — And in the next Case there, it was agreed, that if upon the Scire facias the Sheriff returns the Plaintiff dead, the Defendant shall go quit; quod nota. Ibid.

3. *Two were outlawed in Debt at the Suit of two, and one of the Outlaws sued Charter of Pardon, and had Scire facias against the Plaintiffs, and the one was returned warned, and did not come, and the other Nihil, by which the Defendant would have gone quit, because the Default of the one Plaintiff in Debt shall be a Nonsuit of both, & non allocatur; but he was compelled to sue Scire facias against him who was returned Nihil, and Idem dies to the other; and if he should be returned Nihil again, then the Charter should be allowed; quod nota.* Br. Scire facias, pl. 46. cites 48 E. 3. 3.

count against this Defendant, who appeared without the other, for he says in the Action of Debt they cannot, but by the Reporter, when it comes to this Point, the Outlaw shall have Idem dies by Marriage, till the other has sued his Charter of Pardon, and then to count against both. Br. Scire facias, pl. 46. cites 48 E. 3. 3 — Br. Default, pl. 12. cites S. C.

4. Where Scire facias upon Charter of Pardon upon Outlawry at the Suit of Executors was returned served at the Alias against the one, and not served against the other, yet the Plaintiff was compelled to count against him; otherwise in Debt brought by other Persons. Br. Scire facias, pl. 57. cites 3 H. 4. 10.

Executors may be summoned and severed, and he who comes first by Distress shall answer.

4. *Trespass against three, who are returned Outlawed upon erroneous Process, and the one had Charter of Pardon, and Scire Facias against the Plaintiff.* Br. Scire facias, pl. 63. cites S. C.

But by 4 E. 3. Scire facias issue, and the like is 19 E. 3. Ibid. — Br. Char-

Br. Charters de Pardon, pl. 5. cites S. C.

Brooke makes a Quere, if at the Day all the Plaintiffs come, and this Defendant who had sued his Charter, and the other not, if they might

Br. Executors, pl. 44. cites S. C. Brooke says the Reason seems to be, in a much as

Br. Utlowry, *Plaintiff*, who is returned dead; the Charter shall be allowed, and when the other has Charter of Pardon, he shall have it allowed without suing Scire Facias; for it appears to the Court that the Plaintiff is dead. Br. Charters de Pardon, pl. 61. cites 7 H. 4. 30. and 9 H. 4. 7.

And in Appeal, if the Defendant is outlawed, and sues Charter of Pardon and Scire facias against the Plaintiff who is returned dead, another Scire facias shall not issue against the Heir of the Plaintiff, but the Charter shall be allowed, and he discharged; quod nota. Br. Charters de Pardon, pl. 28. cites 23 H. 6. 15 — Br. Scire facias, pl. 149. cites S. C.

6. Scire facias against the Plaintiff an Abbot; upon *Outlawry* and Charter of Pardon granted to the Defendant, who was outlawed at the Suit of the Plaintiff, the *Sheriff returned*, That the Plaintiff was deposed before the coming of the Writ, and the Defendant went quit Sine Die; quod nota at the first Scire facias, and yet it is not returned served. Br. Scire facias, pl. 145. cites 1 H. 6. 2.

S. P. Br.
Charters de
Pardon, pl.
63. cites 1
H. 6. 2.

7. Debt by J. Abbot of W. against D. till the Defendant is outlawed, and sued Charter of Pardon against the Abbot, the Sheriff returned that before the Tiste of the Sc. fa. the said J. Abbot was, and yet he is deposed, and another elected per quod ipsum Scire facere non potest per nomen J. Abbot prout breve Exigit; and a good Return, and the Charter allowed; for it amounts to as much as Mortuus est, for it is a civil Death. Contra upon such Scire facias against Baron and Feme, and the Sheriff returns that they are divorced; for Persons divorced may be warned; contra of dead Persons. Br. Charters de Pardon, pl. 2. cites 2 H. 6. 5.

8. Debt by a Dean and Chapter, the Defendant was outlawed, and sued Scire facias upon Charter of Pardon, which was returned served, and the Plaintiff did not come, and the Defendant surmised that the Dean is dead after the last Continuance; and because the Plaintiff's Attorney could not deny it, the Charter was allowed. Br. Charters de Pardon, pl. 56. cites 11 H. 6. 1.

9. In Appeal of Death, the Defendant was outlawed, and got Pardon of the King, and had Scire facias against the Appellor without shewing Release, or other Thing; and yet divers Books are, that he shall not have Scire facias, without shewing Writing or other Thing, which will bar the Plaintiff of Execution. Husley agreed, that the Scire facias lay well, without shewing any Thing; and the Sheriff returned upon the Scire facias, that the Appellor is dead; and therefore per Judicium, the Pardon was allowed without suing Scire facias against the Heir; for the Suit is given to him who is Heir to the deceased, who has no Feme, add if this Heir dies, his Heir, scil. the Heir of the Heir shall not have Appeal nor Execution; for it is an Action which dies with the Person. Br. Scire facias, pl. 166. cites 9 H. 7. 5.

See (U. a. 1c) (U. a. 13) Pardon. Writ of Allowance necessary in what Cases.

1. NO particular Pardon, be it at the Coronation or any other, of any Offences whatsoever, that is absolute without any Condition &c. need any Writ of Allowance; but when the Pardon is conditional by Force of the Act of 10 E. 3. cap. 2. there a Writ of Allowance out of Chancery, testifying that the Condition is performed, viz. Surety found according to that Act, may be had, or the Party may plead the finding of Surety &c. and vouch the Record. 2 Inst. 234. cites Hill. 26 E. 3. coram Rege. Rot. 21.

2. H. was indicted of Treason, and produced the Queen's Pardon, without any Writ of Allowance thereof; and Pope, Second Clerk of the

the Crown, informed the Court, that the Precedents were, that in Case of Treason it was usual to allow the Pardon without any Writ of Allowance, but not in Felony. Whereupon the Pardon was allowed. Cro. E. 814. Pasch. 43 Eliz. B. R. Sir Henry Linley's Case.

3. A Pardon was pleaded without a *Writ of Allowance*; and the Court said, that if there had been a *Non obstante* in the Pardon, in this Case they would have allowed it without such Writ. Sid. 41. Pasch. 13 Car. 2. B. R. Howard's Case.

4. C. was *outlawed for Murder*, and brought a *Writ of Error* to reverse it, which being done, he was forthwith arraigned, and *pleaded his Pardon under the Great Seal*, in which there was a *Non obstante for his not finding Sureties* for his Good Behaviour. Per Holt Ch. J. the Pardon ought not to be allowed, without a *Writ of Allowance* directed to the Judges of this Court, out of Chancery, *testifying that he has found Sureties* before the Coroner and Sheriff &c. according to the Statute. But by the other Judges, the Pardon ought now to be allowed without any Writ of Allowance, because the Party hath *three Months given by the Statute after the Pardon to find Sureties, under the Penalty that his Pardon shall be void*, if he does not do it. Nota, That afterwards in the same Term the Writ of Allowance was brought into Court, and upon Prayer &c. it was recorded under the Pardon. Carth. 120. Pasch. 2 W. & M. B. R. Cooke's Case.

5. Pardon of Murder is conditional, viz. The *finding Sureties*, and there must be a *Writ of Allowance*, signifying the Performance of that Condition; and 'tis not merely at the Peril of the Party; for we ought not to give a final Judgment upon Ignorance of its Performance. Per Holt Ch. J. Show. 283. Mich. 3 W. & M. The King v. Parsons.

S. P. per Holt Ch. J. but a Pardon *in Treason* may be pleaded *without any*

Writ of Allowance, because that is absolute. Freeman Rep. 572 Mich. 1691. S. C. by Name of Parsons's Case—While the Statute of 10 E. 3. 2. stood in Force, Pardon of Felony could not be allowed without a Writ out of Chancery, commonly called a Writ of Allowance, testifying that the Party had found Sureties &c. according to that Statute, unless it were dispensed with by a Clause of *Non obstante*; but the Necessity thereof is taken away by 5 & 6 W. & M. 13. which has repealed the said Statute of 10 E. 3. 2 Hawk. Pl. C. 398. cap 57. S. 70.

6. M. pleaded his *Pardon*, and being ask'd for his Writ of Allowance, it was answered, that it had been *allowed in the Old Bailey*; and after some Debate it was *allowed here, without a new Writ*. Comb. 230. Mich. 5 Ann. B. R. Sir Richard Mansel's Case.

(U. a. 14) Pardon. Advantage thereof taken by whom, when, and how. See (U. a. 16) (Q. a. 2) (Q. a. 3)

1. **A** MAN *trick a Juror*, by which it was awarded that his Hand be cut off, and the King granted his Land to another; and after the King pardoned him the Amputation of his Hand and Imprisonment, and whatsoever to him belonged, and then the Offender died; and the Heir brought Scire facias against the Patentee, and re-had his Land. Br. Charters de Pardon, pl. 70. cites 41 E. 3. 25.

2. A Man was bound in one Obligation by Name of R. T. and in another by Name of J. S. and was outlawed upon both, where his Name was R. T. and had Charter of Pardon thereof by Name of J. S. only; and it was allowed, and he went quit of the other, for it cannot be intended the same Person. Br. Charters de Pardon, pl. 3. cites 3 H. 6. 25.

Br. Micholman, pl. 4 cites S. C.

3. Where two are appealed, and are convicted, and the several Charters of Pardon, they shall have several Scire facias's. Br. Scire facias, pl. 177. cites 3 L. 4. 13.

Br. Charters de Pardon, pl. 47. cites S. C. and H. 4 accord

4. H. 1. 1.

In the Star-Chamber the Rule was, not to allow Defendants the Benefit of a General Pardon at

the Hearing of the Cause, unless they *prayed it by their Answer in Court*; and the Reason is, because it does not appear to the Court, that they are not Persons *excepted* in the Act. Obiter. Mo. 770. Dagg v. Penkevell, cites a like Case of *Jener v. Waden*, and *Wentworth v. Wade*.

4. If a Delinquent in the *Star-Chamber* pleads *Not Guilty*, he shall not have Benefit of the General Pardon *at the Hearing*; for he *ought to plead the Pardon, and to aver in Fact that he is not any of the Persons excepted*, or otherwise the Court is not to allow him the Pardon. By the Opinion of both the Ch. Justices, to which the Lord Keeper agreed. Mo. 619. Mich. 42 & 43 Eliz. in Case of *Blake v. Allen*.

5. A. was outlawed after Judgment, before the General Pardon of the 43 Eliz. and after the Pardon died. Upon which his *Executors make Satisfaction*, which is confess'd of Record, and plead the General Pardon, with an Averment that they are none of the Persons excepted therein. It was resolved that the *Executors* may take Benefit of it; for the Act is, *That all the King's Subjects, their Heirs, Successors, Executors and Administrators* shall be acquitted &c. which is to be expounded beneficially for the Subject. And tho' the Proviso is, that the Act shall not extend to any Person *outlawed on any Writ of Ca. Sa. till Satisfaction or Agreement made with the Party*, yet the Act vests such an Interest in the Person outlawed, that tho' he dies, yet his Executors may make Satisfaction, and have Benefit of the Pardon. Per Cur. 6 Rep. 79. b. Trin. 5 Jac. C. B. Sir Edward Phitton's Case.

6. Bill was exhibited in the Star-Chamber *against C. and seven or Eight-score Dutchmen, for Buying and Transporting of fundry great Sums of Money*. The Defendants pleaded in Bar *Not Guilty*, and afterwards in their Rejoinder pleaded the Pardon by Parliament 7 Jac. which extended to Buying of Money, but not to Transporting. And upon this a Question arose, Whether so many of the Defendants at were *neither Naturaliz'd nor Indenizen'd* were capable of the Pardon. And it was argued, that the General Pardon in the Preamble, and in all Parts, useth the Words of *Loving and obedient Subjects*; whereupon the Ch. J. did in a Manner expressly hold them out of Relief. But Lord Hobart says he avoided that Question, as being not necessary; for he says they all agreed that it did no Good in the Rejoinder. But he says he told the Attorney-General, that he held the *Dutch living here within the King's Protection, being of a Friend Country*, to be also truly under his Subjection, and therefore *capable of the Title of his loving and obedient Subjects*, but not of the distinct Title of Natural Subjects, which is usual in Statutes, set in Opposition against Denizens and Strangers. And besides, the General Pardon hath Respect of Retribution for the Subsidy, wherein Strangers pay more than we, and in some Sort may be called Grantors; for by living here they tacitly submit to our Laws, and so their Grant and Consent is involved in the Consent of Parliament. And he thought no Judge would doubt but that such a Stranger should have the Benefit of such a Pardon against common Penal Laws, and other common Offences. *But if the Stranger were not in the Kingdom at the Time of the Pardon*, then he were *not within the Benefit*; for he is no otherwise a Subject than by his Residence here, Hob. 270. Courteen's Case.

7. None shall be obliged to *lay the Strefs of his Case on any particular Words or Clause in a particular Pardon*, but may take Advantage of the whole. 2 Hawk. Pl. C. 398. cap. 37. S. 68.

8. He that will take the Benefit of a General Pardon, *ought to plead the Statute by which the General Pardon was granted*. 21 Car. B. R. 8 Ed. 4. 7. 4 H. 7. 8. That the Court may judge whether his Offence be pardoned or not, which they cannot do, except the Pardon be pleaded, and that the Party *shew he is comprized in the Pardon, and not excepted out of it*. 2 L. P. R. 263. Tit. Pardon.

(U. a. 15) The Effects and Consequences of a Pardon.

1. **F**OR breaking of the Prison of the King, the Appellee shall be *ousted* of Battel; but if he can shew the King's Pardon for the Breaking it, he shall have the Battel; for the Breaking is to the King, by the Opinion of the Court. Br. Battail, pl. 3. cites 1 Att. 3.

S. C. cited by the Ch. J. Hob. 82. Trial 13. Jac. in Case of Cudding.

ton v. Milking, who said that the Reason of the Presumption of the Guiltiness is the same after the Pardon as before; but that the Reason of the Case is, that the King's Pardon not only clears the Offence it self, but all the Dependencies, Penalties and Disabilities incident unto it, and that against the Appellant, for tho' the Appellant has an Interest in the original Fact, which the King would not discharge as against him, yet in the Breaking of the Prison he had none but oblique.

2. If the Heir of the Tenant of the King enters after the Death of his Father, and the King pardons to him all Manner of Entries made upon his Possession, yet he has no Frank-tenement, inasmuch as the Statute is Quod nullam accrescat ei Liberum Tenementum. Br. Charters de Pardon, pl. 43. cites 5 E. 4. 4. per Danby.

If Intrusion by the Heir after the Death of his Ancestor be found by Office, and

after the King pardons it by Act of Parliament, or by Letters Patents, yet the Heir shall sue Livery; for it is not restored to him by the Pardon. Br. Charters de Pardon, pl. 54. cites 30 H. 8. — But if the Pardon was granted before Office found, and at the Making of the Pardon the Heir is of full Age, he shall retain the Land; and Office found after the Pardon shall not grieve him. Br. Charters de Pardon, pl. 54. cites 30 H. 8. — Where Office is found before the Pardon granted, the Pardon shall not serve; for then the King is seized by the Office, and there a Release or Pardon cannot give it, but there ought to be a Gift or Grant. Br. Charters de Pardon, pl. 52. cites 29 H. 3.

3. Appeal of Robbery; the Plaintiff has Judgment against the Defendant, and the King pardons him, yet he shall suffer Execution, unless the Plaintiff upon Scire facias would confess that he would not sue further. Br. Appeal, pl. 128. cites 11 H. 4. 16.

4. Attorney had made Capias, of which there was no Original; by which Attachment issued against him, and he was taken and examined, and confessed it, and was committed to the Fleet, and was there for a Month, and then was put to his Fine, and was sworn that he should not meddle any more in the Law in any Court, and his Name struck out of the Roll of Attornies; quod nota. Per Newton, Hereafter you may have Charter of Pardon of the King, and come back; for the Bishop may assure you of this Oath. Br. Attorney, pl. 7. cites 20 H. 6. 37.

5. If Alienation without Licence be pardoned by Act of Parliament, the Party may enter without Ouster le main, or Amoveas manum; but contra by other Pardon by Letters Patents; note the Diversity. Br. Charters de Pardon, pl. 53. cites 29 H. 8.

6. If the King pardons a Man attainted of Treason or Felony, and after he purchases Lands in Fee, and takes Feme, and has Issue, and dies, this Issue shall inherit; for by the Pardon he was well restored to his Blood; because he is thereby enabled to purchase, and need not to this Purpose have Restitution; and this Reason serves for the Issue had before the Attainder and Pardon. Dal. 14. pl. 3. 1 Mar. 1 Anon. per Bromley and Portman.

2 L. P. R. 27. Tit. Pardon, cites S. C. — Serjeant Hawkins says, I seem agreed that the King's Pardon

cannot restore the Blood, so as to make the Person attainted capable either of inheriting others, or of being inherited himself by any one born before the Pardon; yet if such Person have a Son born after, and purchase Land, and dies, such Son may be his Heir, unless he have an elder Brother alive born before the Pardon; for a Pardon does, as it were, make a Man a new Creature, and give him a new Capacity, in Respect whereof his Issue born after the Pardon may be his Heir, as to Lands purchased after the Pardon, in the same Manner as if he had never been attainted. 2 Hawk. Pl. C. 458. cap. 49. S. 51. — And Ibid. 396. cap. 37. S. 57. The Serjeant says, It seems agreed that the King's Pardon cannot purge the Corruption of Blood by Attainder of Treason or Felony.

7. One Burton a Parson was deprived for Adultery, and then came a General Pardon of Offences, inter alia, of Adultery. Resolved that

S. C. cited H. 5. 24. —

S. P. Palm. by Virtue thereof he was *now become Parson again*, without any Sentence to avoid the said Deprivation, for by the Pardon the Adultery, which was the Cause and Foundation of the Sentence of Deprivation, is discharged, and by Consequence all that depends upon it. 6 Rep. 13. b. This seems to be S. C. as cites D. 135. Burton's Case.

Lat 22 *Boston's Case*, tho' the Report there supposes it to be in another Time.———This Case was denied to be Law by Windham J. who said that tho' Lord Coke cites it out of Dyer, yet no such Case is to be found there; and that it has been often denied: And without Doubt it is not Law, that a Parson shall be restored by the Relation of the Pardon, without other Act. 1 Sid. 164. Mich 15 Car. 2. B R. in Case of the King v. Wainwright and Jefferies——And again denied. Sid 168. in the Case of Toombes v. Etherington.——And again denied per tot. Cur Sid. 222.

Hob. 81. Trin. 13. Jac. S. C. by Name of *Cudding v. Cudding*. And it was said, that he 8. In Case for Words, the Defendant justifies, because the Plaintiff had *stole Sheep*; and the Plaintiff replies a General Pardon. The Court held upon Demurrer, that by the Pardon *both the Punishment and Fault were taken away*, for that the Wrong was done to the King by the Common Law; and the King being Supreme Head, if he pardons, the Party is cleared of the Wrong. Brownl. 10. Trin. 12 Jac. Coddington v. Wilkin.

could no more call him Thief in the present Tense, than to say that a Man has the Pox, or is a Villein, after he is cured or manumitted; but that he had been a Thief or a Villein, he might say. And it was held no great Difference, tho' this had been a special Pardon, and not known to the Defendant; for he must take Heed at his Peril, that he does no Man wrong.——S. C. Hob. 67. And says, that in the End it was adjudged for the Plaintiff, tho' it may be he knew him not to be within the Pardon; for there is no Cause to favour idle and injurious Words. But perhaps if he had arrested him for the Felony after Pardon, it might have been excused if he knew it not, because it is an Act of Justice.

9. A. was Chancellor of a Diocese, but was *deprived and fined &c.* by the Star-Chamber for certain Misdemeanors: B. obtained his Office. A. was afterwards pardoned. It was held by all the Judges at Serjeant's-Inn, that the Pardon had *avoided the whole Sentence*, except as to the *Fine* to the King, and that the Sentence could not take away the Office, being a *Freehold*; and so A. was *allowed to prosecute his Affice* for the Office. Cro. C. 55. Mich. 11 Car. B. R. Bennet v. Easdale.

10. T. the Patron presented *A. by Simony*, and then *A. died*, and then he presented B. and then the King presented; and then came the Act of General Pardon in the 25th of Car. 2. wherein there is a Clause of Restitution of Forfeiture &c. And the Question was, whether or no this had restored the Party to his Right of Presenting. Per North Ch. J. Tho' the King does pardon the Simony, yet the *Disability remains* still upon the Person, and renders him incapable of the Benefice, as was resolved in the Case of *Phillips and Drice* lately. But the Court was divided in Opinion, and that which made the Difficulty of the Case was, because the King had presented here before the Act of Pardon; and altho' the King may revoke his Presentation by express Words, yet whether or no the general Words of Restitution contained in the Pardon shall amount to a Revoking of the Presentation, and of restoring the Party to his Right of Presenting, is the Great Question. Et adjournatur. Freem. Rep. 198. Trin. 1675. C. B. The King v. Turvill and the Bishop of Lincoln.

11. The King pardoned inter alia, *all Judgments and Convictions for not coming to Church*. And it was agreed, that this Pardon did not only pardon the Conviction of *Recusancy*, but also *restored the Party to his Ability, notwithstanding he had not conformed*. 3 Lev. 333. Trin. 5 W. & M. C. B. Lord Petre v. the University of Cambridge.

12. A. was indicted and tried at Bar for *High Treason*; and it was objected to the Evidence of B. that he had *stood in the Pillory upon a Judgment* in an Information for *Perjury*; and it was held by Holt Ch. J. that he was *restored* by the General Pardon of 2 W. & M. which operated by Way of Restoration, and made him a *new Creature*. And

It was insisted, that the Infamy and Disability in this Case flowed from the *Judgment*, and not from the *Crime*, which might be pardoned even by the *King alone*, tho' where it flows from the *Crime*, it can't be pardoned but by *Act of Parliament*. Salk. 689. Patch. 7 W. 3. B. R. The King v. Crosby.

13. A. was convicted of *Barratry*; and upon this his Evidence being objected to, the Record was produced, and the Judgment was to pay 500 Marks, but was *not to stand in the Pillory*. This being held to be a good Objection (because the Disability arises from the Infamy of the Crime, whether the Punishment be infamous or not) it was then insisted to be within the late General Pardon. It seems to have been held per Holt Ch. J. that the Conviction was pardoned, and the Party *restored to his Credit* by the Act of Parliament, but that the King's *special Pardon* could not have restored his Credit, the Disability in this Case being incur'd by the *Infamy of the Crime*, and not of the *Punishment*. Salk. 690. Mich. 12 W. 3. B. R. The King v. Ford.

14. A. having been attainted and pardoned, and permitted to go beyond Sea, his *Creditors* moved to *charge him in Custodia*: but Holt Ch. J. refused it, for this would *defeat* the Queen's Pardon, by disabling him from going beyond Sea, which was the Condition of the Pardon; and there is no Reason that the Pardon should enure for the Benefit of the *Creditors*, to the Prejudice of the *Party*, and put them in a *better Condition than before*; for if the Attainder had continued he would have been *hanged*. Salk. 500. Hill. 1 Ann. B. R. Foxworthy's Case.

15. The *Crime being pardoned cleanses the Party from the Guilt*. Per Raymond Ch. J. Gibb. 108. and says it was expressly adjudged so per Holt Ch. J. in the Case of Aaron Smith. 2 Salk. 689.

Crime. 12 Mod. 119. The King v. Groenvelt.——A General Pardon *doth discharge* not only the Punishment which was to have been inflicted upon the Person that did commit the Offence pardoned, but also *the Guilt* of the Offence it self. It pardons *Culpa* so clearly, that in the Eye of the Law the Offender is as innocent as if he never had committed the Offence, so far doth Mercy extend therein. 2 L. P. R. 270. Tit. Pardon.

16. If an *Indictment* on the Statutes of *Forcible Entry* be removed into B. R. and the Defendant, having been turned out of Possession by the Grant of Restitution to the Prosecutor by the Justices of Peace, traverses the Force in the King's Bench, and then the Offence is pardoned by a General Pardon, the Court cannot proceed on the Trial, notwithstanding the Defendant would waive the Benefit of the Pardon, because it appears judicially, that the King can have no Benefit of a Fine from the Defendant, if a Verdict pass against him. Hawk. Pl. C. 154. cap. 64. S. 63.

17. Serjeant Hawkins says, It seems to have been always agreed, That the *Forfeiture* of Goods, by *Hemlock* *se defendenti* may be saved by a Pardon (which in this particular Case seems to purge the Offence ab initio). 2 Hawk. Pl. C. 351. cap. 37. S. 3.

18. It seems agreed, That notwithstanding the King's Pardon *to a Simonist* coming into a Church, contrary to the Purport of 31 Eliz. 6. or *to an Officer coming into an Office by a corrupt Bargain*, contrary to the Purport of 5 & 6 E. 6. 16. may save such Clerk or Officer from any criminal Prosecution in Respect of the corrupt Bargain, yet it shall not enable the Clerk to hold the Church, nor the Officer to retain the Office, because they are absolutely disabled by Statute. 2 Hawk. Pl. C. 296. cap. 37. S. 56.

19. Pardon of Treason or Felony, even after a Conviction or Attainder, does so far clear the Party from the Infamy, and all other Consequences of his Crime, that he may *not only have an Admon* for a Scandal, in calling him *Traitor or Felon*, after the Time of the Pardon, *but may also be a good Witness*, notwithstanding the Attainder or Conviction; because the Pardon makes him, as it were, a new Man, and gives

It discharges all the Effects and Consequences of the

not only the

And if he been admitted, that the King's Pardon of the

on a Conviction gives him a new Capacity and Credit. 2 Hawk. Pl. C. 395. cap. 37
tion of Man- S. 48.

slaughter, has the same Effect as to this Purpose as the Burning would have had, which is agreed to *restore the Party to his Credit*. 2 Hawk. Pl. C. 395. cap. 37. S. 49. — But it has been adjudged, That a Pardon is of no Manner of Effect as to this Purpose, *untill it has pass'd the Great Seal*. 2 Hawk. Pl. C. 395. cap. 37. S. 50.

(U. a. 16) Pardon. Pleadings.

1. IF a Man be *outlawed in Trespass* at the Suit of the King, and has Pardon, yet he *shall not plead Not Guilty after*; quod nota. Br. Charters de Pardon, pl. 30. cites 22 Aff. 47.

If there be a Variance between the Record on which a Man is con-

2. A Pardon was produced for *Felony*, which was *variant from the Indictment and from the Name*; and yet because it appeared, that it was the Will of the King that he should be pardoned, he was remitted to Ward, and respited. Br. Charters de Pardon, pl. 32. cites 26 Aff. 46.
victed or attainted, and his Charter of Pardon, yet if there be no *Refugnancy to intend that the same Person or Thing are meant in both*, it may be supplied by proper *Averments*. And therefore, if one be indicted by the Name of J. S. Yeoman, and pardoned by the Name of J. S. Gentleman, or indicted by the Name of B. the Tasker, and pardoned by the Name of B. the Son of W. he may make good the Variance, by averring that he is the same Person intended in such Indictment and Pardon; or if in an Indictment of the Death of J. S. the Stroke be supposed to have been given the 1st of August, and in the Pardon on the 3d. the Party may aver that the Death of one and the same J. S. are intended in both. And if such variant Pardon be pleaded without such Averment, it seems that the Court may in Discretion give the Party farther Day either to perfect his Plea, or to purchase a better Pardon. 2 Hawk. Pl. C. 398. cap. 37. S. 66. — 3 Inst. 240.

3. A Man *indicted of Trespass came without Process, and pleaded Pardon of the King of all Trespasses*, and of this vouched Record, and *had two Days to have his Record*. Br. Charters de Pardon, pl. 33. cites 27 Aff. 58.

S. P. Or he may plead all the first Record of Discharge, and have Day to shew it. Br.

4. If a Man is *indicted of the Death of a Man, and arraigned, and pleads Pardon, and is discharged*, and after Appeal is brought against him, and the Plaintiff is nonsuited, and the Defendant arraigned upon the Declaration for the King, and pleads the Charter again, there he ought to shew it, notwithstanding it was allowed of Record before. Br. Charters de

Pardon, pl. 15. cites 11 H. 4. 41.

Monstrans, pl. 36. cites S. C.

S. P. 2 Hawk. Pl. C. 398. cap. 37. S. 67.

5. He who pleads *Not Guilty cannot plead Pardon after, unless it be of later Date*, and the Charter was allowed, notwithstanding that it *varied in Names, and Day of the Indictment and the Appeal*; but it does not appear what Variance; the Reason seems inasmuch as it was of Appeal of Death, and a Man cannot be twice killed; contra of Robbery. Br. Charters de Pardon, pl. 15. cites 11 H. 4. 41.

Jenk. 129. rl. 62. says, That if the King pardons a Felon, and it is

6. If a Felon has Pardon to plead, and pleads *Not Guilty*, he shall lose the Advantage of his Pardon, and shall not plead it after. Br. Corone, pl. 199. cites 35 H. 6. 1. & concordat 19 H. 8. and in H. 4. 41. per Cheynie; but contra M. 3 M. 1.

shewn to the Court, and yet the Felon pleads Not Guilty, and waives the Pardon, he shall not be hang'd; for it is the King's Will that he shall not, and the King has an Interest in the Life of his Subject. The Books to the contrary are to be understood where the Charter of Pardon is not shewn to the Court. By all the Judges of England.

Serjeant Hawkins says, It is certain that a Man may waive the Benefit of a Pardon under the Great Seal, as where one who has such a Pardon, does not plead it, but takes the General Issue, after which he shall not resort to the Pardon. 2 Hawk. Pl. C. 396. cap. 37. S. 59.

Br. Taches, 1. cites

7. B. Sheriff of the County of O. returned an *Exigent Quarta ex officio* in B. R. and tender'd to show that the Defendant is outlawed, upon which

issued Certiorari, and the Coroners returned him outlawed by the same Exit-
gent, by which the Sheriff was amerced to 50 l. and the Estreats of it sent
into the Exchequer; upon which Process issued against him, by which
he came, and shewed Pardon of all Misprisions, Offences and Contempts
done mesne between the Certificate of the Coroners and the Amercement ad-
judged, and prayed to be dismiss'd; but the Barons awarded him to the
Fleet, by which he had Habeas Corpora out of B. R. to the Warden
of the Fleet, who brought him to the Bar, and shewed the Cause
aforesaid, and there he pleaded the same Pardon and Writ of Allow-
ance, and found Surety if &c. and the Attorney of the King dem-
urr'd upon his Plea; and per Cur. *Where the Estreats are sent into the
Exchequer, as above, yet the Record remains in Bank, and there it shall be
traversed, and there the Pardon shall be pleaded, and not in the Exchequer
where the Estreat is.* And Per Fortescue Ch. J. the Points are, If the
Words of the Pardon are sufficient? and if the Sheriff be attained by
Certification of the Coroners? and if the Sheriff has surceased his Time
to plead his Pardon, or not? Br. Charters de Pardon, pl. 25. cites 36
H. 6. 24.—And says, that 37 H. 6. 21. it appears that the Sheriff brought
Special Writ out of Chancery in Nature of an Audita Querela, by
Force of his Charter, directed to the Justices of B. R. that they do
Right to him, by which he had the Habeas Corpus. And the Opinion
of all the Justices was, that the Pardon shall serve the Sheriff; for
those Words Misprision and Offence shall serve him, for it is Misprision
and it is Offence; and tho' the Pardon be before the Amercement,
yet the Pardon is good; for the False Return was the Offence, which
was before the Pardon, and then when it is pardoned no Amercement
ought to be assesse'd, because it is pardoned; and if the Justices had
had Conscience thereof, they would not have assesse'd the Amercement;
and the Party has not surceased his Time to plead it; for he *had not
Day to plead it*, nor Cause till the Amercement was assesse'd and estreat-
ed, and Process made for it. And this Case was argued in the Ex-
chequer Chamber by all the Justices; & per tot. Cur. A Pardon grant-
ed at the Suit of the Party *shall be taken more strong for the King, and
more strong against the Party; but a General Pardon, or Pardon granted
ex mero Motu, shall be taken more strong against the King, and most
for the Benefit of the Party; for it is intended there that the King is
apprised of the Matter; Contra where it comes by Suit of the Party,
or by Surmise: And it was said, that where the Sheriff returns Quarto
exactus, and the Coroners above certify that the Defendant is out-
lawed, it shall be intended that the Certificate of the Coroners is true,
because they are Judges of it, and the Return of the Sheriff is false.*
Quatermain's Case.

8. Where a Man pleads Pardon granted by Parliament, he ought to
aver that he is not any of them who are excepted, and that he was not Ad-
herent to M. who was excepted. Br. Charters de Pardon, pl. 46. cites 8
E. 4. 7. by the Justices.

9. And so of all other Exceptions. Br. Charters de Pardon, pl. 46.
cites 8 E. 4. 7.

Freem. Rep. 84. Pasch. 1673. in Case of Philips v. Crawly. — S. P. 2 Hawk. Pl. C. 396. cap 37. S. 60.
— S. P. per Denderidge J. 2 Roll. R. 307. Hancock's Case. — S. P. For where Pardon, Statute,
Custom, or the like, as Prescription &c. makes Exception or Forepri'e, or Condition, or a Thing which
amounts to it, *these shall be pleaded expressly*. Br. Charters de Pardon, pl. 66. cites 4 H. 7. S. — S. P. Br.
Pleadings, pl. 124. cites 8 E. 4. 7. & 4 H. 7. 8.

Where disabling Exceptions are in the Body of an Act of General Pardon, there the Party ought to aver
that he is not within the Exceptions, but not where the Exceptions are only in the Preamble of the Act; per
Twiddle; which the Court agreed. Keb 20. Pasch. 15 Car. 2. Whitwick v. Osbourn — S. C. argu-
ed 1 Lev. 20. but no Resolution — Holt Ch. J. agreed, that there were many Authorities, that he
that pleads an Act of Pardon should shew that he was not within the Exception of the Act, and cited 3
Inst. 234. Yet he could not think it necessary to do it, if the very Preamble of the Act be not qualified and
restrained; for if there be first General Words of Pardon, and after comes a Proviso or Exception, the
natural Way is to plead the Pardon generally, and then the King's Attorney, upon View of the Pardon
so entered upon Record in the Plea, is to shew that the Party is within the Exception. 12 Mod.
613. Hill. 15 W. 3. in Case of Ingram v. Peck.

Serjeant Hawkins says, If the Body of a Statute be general as to all Persons whatsoever, and afterwards One be excepted in the Proviso, perhaps it may be sufficient to plead such Pardon without any Averment, That he who pleads it is none of the Persons so excepted, it being a general Rule, that where a Man is within the general Words of the Body of a Record or Debt, which is qualified by subsequent Provisions, it is sufficient for him to bring his Case within such general Words, and that the Exceptions in such Provisions ought to be shewn of the other Side. 2 Hawk. Pl. C. 397. cap. 37. S. 60.

If a Person who would take Advantage of a Pardon be of the same Name with one of the Persons excepted by Name, it is said that it will not be sufficient for him to aver that he was none of the Persons excepted, without adding that he is a different Person from such other of the same Name. But Serjeant Hawkins says, How it can be true, unless it appear by some Addition to the Name in the Statute, may deserve to be considered. 2 Hawk. Pl. C. 397. cap. 37. S. 60.

10. *And that if J. S. be excepted, and there are three of the Name, and the other pleads the Pardon, he ought to state it.* Br. Charters de Pardon, pl. 46. cites 8 E. 4. 7.

Br. Charters de Pardon, pl. 50. cites S. C. but seems to be misprinted. But contra it is in Debt or Trespass, where he is in Execution; for there he ought to shew Acquittance, or other Matter which proves the Plaintiff's Consent. Ibid.

11. *And where it is pleaded in Pais, where the Attorney of the King is not present to confess the Averment, they shall make Proclamation; and per Markham, the Court may rejoin for the King.* Br. Charters de Pardon, pl. 46. cites 8 E. 4. 7.

S. P. per all the Justices in Cam. See c. Br. Journ. pl. 94. cites S. C. and 75 H. 6. 1. accordingly.

12. *If a Man be brought into Court by Capias Utlagatum upon Appeal, and he pleads the Pardon of the King against the King, he shall have Scire facias against the Appellant, without shewing Matter of Discharge against him.* 21 E. 4. 73. b. Per Hulley Ch. J. who shewed thereof Precedents.

S. P. Lane 71. Bently v. Leigh.—Vaughan ask'd Ellis whether, supposing there was a General Pardon, and the Party did not plead, nor the Judges did not take Notice thereof, whether the Party might have Remedy by Writ of Error? And Ellis said No; because they would alledge nothing for Error but what did appear in the Record; to which Vaughan assented. Freem. Rep 84. Pasch. 1673. in Case of Phillips v. Crawly.

13. *If Recognizance of Debt passes for the King upon Issue tried, and after the King pardons it, this shall not be pleaded between Verdict and Judgment, but after Judgment.* Br. Charters de Pardon, pl. 75. cites 11 H. 7. 10.

14. *If Quod ei de forceat be brought, and a wrongful Entry is found, and a General Pardon in Parliament pardons all Offences, if the Tenant, when Judgment is given against him, does not suggest to the Court, that neither he nor his Offence are excepted, if Judgment be entered Quod Capiatur, it is not Error; for there are many Exceptions in a Pardon; and in a Civil Matter the Court is not bound ex Officio to regard it, but they may if they will; and therefore if Judgment be given Sed non in Misericordia quia pardonatur, it is good; for the Judges may, if they will, take Consuance of a Pardon, tho' it be not pleaded.* Jenk. 258. pl. 54.

Judges did not take Notice thereof, whether the Party might have Remedy by Writ of Error? And Ellis said No; because they would alledge nothing for Error but what did appear in the Record; to which Vaughan assented. Freem. Rep 84. Pasch. 1673. in Case of Phillips v. Crawly.

Serjeant Hawkins says, It seems agreed, that if any Persons are excepted out of a General Pardon, the Court is not bound, and some have held that it has no Power, in Discretion to give any Person the benefit of it, unless it be pleaded. 2 Hawk. Pl. C. 396. cap. 37. S. 60.—But when a Pardon is general, without Exception of any Person or Cause, in such Case the Judges shall take Notice of it; per Doderidge. 2 Roll R. 307. Hancock's Case.—The Party need not aver that his Offence is not excepted in a General Pardon, because the Justices have Notice sufficient of Offences excepted by the Words of the Pardon, but not of Persons; but this rests upon the Averment; by the Opinion of both the Chief Justices, to which the Lord Keeper agreed. Mo. 619. Mich. 42 & 43 Eliz. in Case of Blake v. Allen.—Where a General Act of Parliament excepts certain Kinds of Crimes, there is no Need to aver that the Crime whereof the Person is indicted, is not one of such excepted Crimes; but the Court ought judicially to take Notice whether it be excepted, or not. 2 Hawk. Pl. C. 397. cap. 37. S. 62.—Also where such a Statute excepts only one particular Person, it has been said that there is no Need of an Averment, that a Person indicted is not such Person; but that the Court is to take Notice whether he be, or not. 2 Hawk. Pl. C. 397. cap. 37. S. 63.

15. *In Debt the Defendant pleaded Outlawry in the Plaintiff at the Suit of one H. in C. B. The Plaintiff pleaded the Pardon of 31 Eliz.*

and

and also that he brought *Scire facias*, and *H. was returned dead*, by which he was adjudged to go fine Dies upon which Plea the Defendant demurr'd in Law, because it was not averr'd that he is not any of the Persons excepted out of the Pardon, as 7 E. 4. 7. 4 H. 7. 8. Com. 103. But it seem'd to the Court, that the Pardon is allowed enough to make any Man answer to the Action of the Plaintiff, but not against the Queen; for she is not bound by the Allowance. Mo. 303. Hill 34 Eliz. *Attley v. Harrison*.

16. A. was *outlawed* after Judgment before the General Pardon, and died after the Pardon. His *Executors* make Satisfaction, and *without any Process* plead the Pardon. Adjudged, that as in this Case no *Scire Facias*, nor *Capias Utlagatum*, nor other Process lies against the *Executors*, they may (after Satisfaction made) *come in gratis* *without Process* for the Necessity of the Case, and plead the General Pardon, with an *Averment* that they are not any of the Persons excepted. Adjudged per Cur. 6 Rep. 79. Trin. 5 Jac. *Sir Edward Phitton's Case*.

17. A. was indicted of stealing some Plate from King James, whereas it was in Truth Queen Anne's, and stoln from her, for which he was pardoned; and being again indicted, there was a General Pardon, *excepting Goods purloined from the King*; the Court doubting whether A. was within the Exception of this Pardon, advised him to plead. Cro. C. 449. Hill. 11 Car. B. R. *Bell's Case*.

18. In *Cave for Words*, the Defendant justifies that the Plaintiff had served as a Soldier against the King; Plaintiff demurs, by Reason of the General Pardon. But it was adjudged for the Defendant; for that the Plaintiff ought to have shown that he was not one of the Persons therein excepted. Raym. 23. Mich. 13 Car. 2. B. R. *Harris's Case*.

19. In a *Scire facias* brought upon an Inquisition against A who owed 30*l.* to J. S. who had been attainted for Murder, and executed, A pleads that he was not indicted *Modo & forma*. Hale Ch. B. held, that upon this Issue the Act of General Pardon could not be given in Evidence, but ought to have been pleaded; this not being a General Issue within the Intent of the Act, it would have been a good Bar. Hard. 421. Trin. 17 Car. 2. *The King v. Barnard*.

20. The Earl of S. was by the Convention, which was afterwards turn'd into a Parliament, Anno 1 W. & M. impeach'd by the Commons for High Treason, for being reconciled to the Church of Rome contrary to the Statute; and thereupon he was committed to the Tower by the House of Peers, and there continued till the Parliament was dissolved, and a new one called, and now (after a long Session) adjourn'd for two Months. And now the Earl was brought to the Bar by a *Habeas Corpus*, and his Counsel moved that he might be discharged upon the new Act of Oblivion, which pass'd in the last Session of Parliament, *wherein neither his Crime nor his Person were excepted*, but clearly within the Act of Pardon. But per Cur. Notice cannot be taken of this Act, unless it be pleaded with the *Averments*; because there are several Exceptions in it, both as to Crimes and Persons, therefore it is necessary that the Party, who would have the Benefit thereof, should aver himself by Plea capable of such Benefit, and not excepted therein, as 'tis ruled in *Plowden*, and other Books; and here the Lord at the Bar cannot plead this Pardon, *because there is nothing before the Court at which to ground it*. 2 Plow. Carth. 131. 132. Patch. 2 W. & M. B. R. *The Earl of Salisbury's Case*.

* The Reporter adds a Note, Whether he might not plead it. By Force of the Matter and by the Statute, and not as the Case Roll Ibid. in Marg.

21. 12 W. 3. 2. N. Pardon shall be pleadable to any Impeachment by the Commons in Parliament.

22. It seems plain, that Pardons of Manslaughter, or any other Felony except Murder or Rape, remain as they were at Common Law; from whence it follows, that the Pardon of the Felonious Killing of J. S. may be well pleaded to an Indictment of Manslaughter for killing him. 2 Hawk. Pl. C. § 16. cap. 37. S. 18.

23. He who pleads a *particular Pardon*, ought to *produce it sub Pede Sigilli*, tho' it be a Plea in Bar; because it is presumed to be in his Custody, and the Property of it belongs to him; yet if a Man pleads such Pardon, without producing it, *the Court may in Discretion indulge him a farther Day* to put in a better Plea; and that at such Day he may perfect his Plea by producing the Charter. 2 Hawk. Pl. C. 397. cap. 37. S. 65.

(X. a.) Charter of the King. *Non Obstante*. [The Original thereof.]

It was said that Non Obstante was invented and first used in the Court of Rome, for which Marfil. Pat. pronounced a

1. **I**N Time of H. 3. about the Year 1252. the Clause of Non Obstante was used first in England by the King, in his Grants and other Writings. Matthew Paris calls it an odious and detestable Clause. And Roger de Churshy then Justiciary, fetching a deep Sigh at the Sight thereof in the King's Grant, cried out of both the Time and it, laying it was a Stream derived from the sulphureous Fountain of the Clergy. Speed. 530.

V^e against the said Court, for introducing this Clause of Non Obstante, which has been an ill Precedent, and mischievous to all Commonwealths of Christendom; for the Temporal Princes perceiving that the Pope dispensed with his Canons, have used their Prerogative to dispense with their penal Laws and Statutes, where before they had caused their Laws to be religiously observed, as the Laws of the Medes and Persians, which could not be dispensed with. And therefore a Canonist said, *Dispensatio est Vetus quod Venerat jus commune*. And another said, That all Abuses should be reform'd si duo tantum Verba, (viz. Non Obstante) non impedirent. And Mat. Paris, in Anno Domi 1246. having recited certain Decrees made in the Council at Lions, which were beneficial for the Church of England, Sed omnia hæc & Alia, said he, per hoc Repagulum (Non Obstante) infirmantur. Dav. Rep. 69. b. Pasch. 9 Jac. in C. B. in Ireland, in the Case of Commenda.

The Laws concerning Non Obstantes are none of the ancient Laws of this Land, but brought in by the Pope. The Book of 2 H. 7. fo. 6. b. & 7. first gave Rise to this exorbitant Power; yet it is not the Opinion of all, or indeed of any of the Judges, as it is affirmed to be. Arg. 2 Mod. 261. Trin. 29 Car. 2. in the Exchequer, in the Case of Arris v. Stukely.

(Y. a.) Non Obstante. *Licences* upon Penal Statutes.

1. **W**HEN an Act of Parliament generally prohibits a Thing upon a Penalty which is Popular, or only given to the King, because it may be inconvenient to diverse particular Persons, in Respect of Person, Place and Time &c. the Law has given Power to the King to dispense with particular Persons. Co. 11. Monopolies 88.

* S. P. Per the Ch. J. 8 Mod. 18 Mich. 7 Geo. in Sir Hans Sloane's Case. — To say that the King cannot dis-

2. But when the Parliament has made an Act to restrain * pro Bono Publico the Importation of several foreign Manufactures, to the Intent that the Subjects of the King may apply themselves to the making of the said Manufactures, there the King cannot for a private Gain grant the sole Importation of them to one or diverse (without any Limitation) Non Obstante the Act. Co. 11. Monopolies 88.

pense with a Law that is made pro Bono Publico, is to say that he can dispense with no Law at all, for all Laws are supposed to be pro Bono Publico, when they are first made; per Herbert Ch. J. Freem. Rep. 493. Pasch. 1682. in Sir Edward Hale's Case.

3. As the King cannot licence a Man to import foreign Cards, notwithstanding the Act of 3 E. 4. for the Reason aforesaid. Co. 11. Monopolies 88.

There is not any Difference when

4. Where a Statute concerns the Benefit of the King only, he may dispense with it by a Non Obstante. D. 7. 3d. B. per Coke.

5. But

5. But where a Statute concerns the Benefit of the Subject, there the King cannot dispense with it by a Non Obstante. D. 7 3a. 25. *Hieman's Case.* Per Curiam.

the Law de-
scribed with
is *Per Per-*
Patens, for

every Law is supposed to be so; but the true Distinction is, when the Law gives any particular Person an Interest, and when it concerns no one Person more than another; for there, in the first Case, the King cannot dispense, but in the last he may, as the Law is interpreted; for though *Nulla Lex est pro Bono Subditorum*, yet it is not *Singularis*, but *Populi Communis*; and no One can have an Action, for as well every one may have an Action *Per Viandum* Ch. 1. *Præsum. Reg.* 128. *Hill. 1671. Thomas v. Somers.*

The King cannot dispute with law; that is bound by the Statute of Provisions, nor with the Statute against Mixing of Blood, for there is a natural wrong to the Law. Ibid. 139.

In Case of a Common Informer, after Action commenced, the King cannot dispense, because the Beginning of the Action doth attach an Interest in the Party, though the King might pardon it before Action brought. Ibid.

In some Cases the King cannot dispense where no particular Intereſt or Action was given, as in Case of Simony, or Buying of Offices &c. but that is becauſe the Perſons there are under an abſolute Duty, as if they were dead; per Vaughn Ch. J. *10 Mod. 139*

It was resolved that the King could not dispense with the Disability upon the Statute of 21 Eliz. 6. of *Empery*, by a Non Obstante; for *when an Act of Parliament is made, that dispelleth any Person, or in itself any Thing void or turtious, as the Grand Jurors of the Common Pleas, in this Law all the King's Subjects have an Interest*; and therefore the King cannot dispense therewith, any more than with the Common Law. 3 Inst. 154. 405 Mich. 15 Jac. 1. — But where a *Statute prohibits any Thing upon a Penalty*, and gives the Penalty to the King, or to the King and the Informers, there the King may dispense with the Penalty; and this Diversity is warranted by our Books. 3 Inst. 154.

6. As where the Statute of 15 R. 2. cap. provides in the Negative, That the Admiral shall not hold Pleas of any Things but of those which were & are upon Admiralty, Mr. King cannot by his Charter dispence * with it by a Plea of Bona fide, and give Power to the Admiral to hold Plea a prius & de novo upon ad. Stat. because this Statute was made for the Benefit of the Subject. *Id. 726. In Human's Case. Per Curiam.*

7. It was ordained by the Statute Staple of 27 E. 3. that Merchants Aliens might bring over the Sea Merchandizes of the Staple, but not Merchants Denizens; and after, by the Quire of the King and his Council, for certain Reasons (which was recited of the said Merchandizes of Denizens; and thereupon Proclamation made and sent to the Customes, to sume them to paye till a certain Time, paying the Customes as Aliens. And because that the said Merchants Denizens doubteth them to be impeached in Time to come for their Merchandize which they have so passed, by Virtue of such Grant and Proclamation, forasmuch as they were took out of the Parliament, the King willing to provide for their Surety in this Behalf, hath ratified and confirmed in this Parliament the same &c. 34 E. 3. cap. 21.

1. 1. 1.

8. Rot. Parl. 1 H. 5. M. 15. The Commons pray, That the Statutes for Voidance of Aliens out of the Realm be held and executed; to which the King agrees, saving his Prerogative, that he may alter the same with such as he please; and thereupon the Commons answered, that their Intention was no other, nor ever shall be, by the Aid of God.

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9. Rat. [Parl. 1. D. 5. B. 22. The Statutes of Provisors confirmed, and that the King shall not give any Protection or Grant against the Execution of them, saving the King's Prerogative; to which the King assented.

Payson's
Carr. Rec.
Vol. 506.
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16. Where a Statute is, *That none shall flip H^{on}or, and S^{er}vice to this*, the King may dispense with it by *Letters*, and this *Letter* is *Force, and Affirmation by the King &c.* and this with Clause of Non Obstante. Br. Pro-rogative, pl. 122. cites 2 R. 3. 11.

D. S. 1000
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19 H. 3. and the R. 2. in the 20th Year, gave Licence to the Merchants of New-England, to buy and Fells to sell, of New-Port, England, Tobacco, as they were used to them. And so, in 1632, the H. 6. is granted to Robert, Esq. Merchant of London, New-England an. Sum. an. in Red. and in White. 1634 H. 6. offered of great Quantities of Tea, and H. 7. raised great Sums of Money, to give Licence to Merchants to trade toward the Orientall Indies, viz. to Alabastrum de Berberis, the Coast of Hindustan, and a Multitude of other Places, of the East and West Indies.

in Annis 20. 21. 22. prout Patet ex Compositione in [inter] H. 7. and Dudley.——Ibid. cites Hill 3 Jac. B. R. Rot. 128. Information against *Waves*, upon the Statute 5 Eliz. for Shipping and Transporting of Sheep-skins, and he pleaded the Grant of Qu. Eliz. Anno 37. to one Gilbert Lee, to transport the Number of 20,000 a Year for 10 Years to come &c.

S. C. cited by Williams J 3 Bulst. 5. 11. The King licensed one to transport *Bell-mettal*, *Non Obstante any Statute made, or to be made*; afterwards an Act was made, prohibiting the Exportation of Bell-mettal, upon a Penalty. It seemed to Baldwin and Shelly, that by this Act, to which every Man is Party, the Licence was revoked, and that the King cannot dispense with a new Law to be made, before it is made, as he may in Things to come, in which he hath an Inheritance; as he may grant to one to be discharged of Taxes, and Subsidies to be granted, and it is good. Quære. Dy. 52. pl. 1. 2. Hill. 33. H. 8.

12. The Act 4 H. 7. cap. 9. prohibits the Importation of *Gascoigne Wine*, but only in *Englsh Ships*, and the Master and Mariners being English, under Pain of Forfeiture &c. afterwards the King by Letters Patents licensed one to import 600 Tun of that Wine in any Ship, *Non Obstante the Statute, without saying any Thing of the Mariners &c.* And by the Statute of 32 H. 8. cap. 14. it is enacted that the said Statute shall stand in full Force, so that from henceforth no Person shall attempt to do any Thing contrary thereto, upon the Pain limited in the said Statute. And upon Information brought in the Exchequer against the Assignee of the Patentee, for importing contrary to the 4 H. 7. 9. he pleaded the King's Grant, without a Profer hic in Curia of the Letters Patents. And the better Opinion was, that for that Reason the Plea was ill; but as to the Matter in Law, whether the Grant was good or not, they seemed not so; quære. And by the Report of Baron Fortescue, the Judgment was given for the King the same Term, for the Insufficiency of the Plea, but not for the Matter in Law. Ideo inde quære. D. 54. pl. 17. Mich. 34 H. 8. Richard's Case.

13. *No Act can bind the King* from any Prerogative which is sole and inseparable to his Person, but that he may dispense with it by a *Non Obstante*; and this Royal Power cannot be restrained by any Act of Parliament, neither in Thesi nor in Hypotheli, but that the King by his Royal Prerogative may dispense with it. 12 Rep. 14. b. Hill. 24 Eliz. Anon.

14. Where a *Statute expires, and is revived*, it seems as if *Non Obstante* to the expired Statute will not reach the new revived one. See D. 202. b. 70. Marg.

S. C. cited 3 Bulst. 91. Mich. 13. Jac. in Case of the King v. Zaker & al.—S. C. cited Cro. J. 386. Mich. 13 Jac. B. R. in Case of the King v. the Bishop of Winchester & al.—S. C. cited Hob. 75. in Case of the King v. the Bishop of Norwich; for the Person being disabled by Statute, could not be enabled by the King.——Serjeant Hawkins says, that a Person disabled by the abovesaid Statute cannot be restored to his Ability at any Time during his Life, by any Grant or Dispensation whatsoever. 2 Hawk. Pl. C. 169. cap. 67. S. 5.

16. J. H. and N. H. his Son, having a *Joint-patent of Clerks of the Court of Wards*, with an expresse Provilion, that if one of them should die, the other should enjoy the whole *Non Obstante the Statute*. J. H. being dead, Sir S. L. moved the King that he might be joined by Patent to N. H. the Survivor, upon Opinion that by Words of the Statute 32 H. 8. (viz. that there should be two Clerks to be named by his Highness to be Clerks of the said Court.) This was referred by his Majesty to Viscount Wallingford, Lord Hobart, and Sir James Lea Attorney of the Court; and they certified the King (having heard Counsel, and seen the former Grants ever since the Erection of the said Court) that the King

King was not bound to the Number, but * might with a Non Obstante dispense with it; but the Auditor's Place being *judicial*, and appointed to be in two, cannot be in less, because the Subject has an Interest in the Judicature, which cannot be committed either to more or less than the Law of their Creation has established. Hob. 214. Hare v. Leifure.

* Because this Office is ministerial. Jenk. 292 pl. 34. S. C.

17. The Statute 3 Jac. 1. cap. 4. which gives Forfeitures for Recusancy says, S. 11. That the King may refuse the Penalty of 20 l. a Month, and take Two-third Parts of his Lands and Leases which shall be or come to such Offenders, till he or they shall conform, in Lieu of the 20 l. Monthly; and S. 12. is, That the King shall not lease the said two Parts to the Recusant, or to any other for a Recusant's Use. — The Lord Brudnel was a Recusant Convict. The Earl of W. took a Lease of the King of two Parts of his Estate, in Trust for the Recusant, and with a Non Obstante of the Act above mentioned; but because the Trust did not appear by any Matter of Record, the Court would not take Notice of it by any Matter Dehors; but their Opinion was, That the King in this Case could not dispense, because he was disabled by the Act to grant &c. Hard. 110. Paich. 1658. in the Exchequer. The Attorney General v. Earl of Westmoreland.

18. In Debt upon the Statute 12 Car. 2. cap. 25. which enacts, That no Person sell Wine by Retail, unless enabled according to this Statute, under the Penalty of 5 l. for every several Offence. Upon * Nil Debet pleaded the Jury find the Statute 7 E. 6. cap. 5. That none sell Wines without Licence, according to the said Act. Then they find the Patent of 9 Jac. incorporating the Vintners of London, and that such as should be free of their Company might sell Wine by Retail, or in Gross, within three Miles of London &c. in their Houses or elsewhere, Non Obstante the said Statute 7 E. 6. or any other Statute made or to be made. They likewise find the Statute of 12 Car. 2. 25. and a Proviso therein not to prejudice the Vintner's Company, but that they may use and enjoy such Liberties as they have heretofore lawfully used. It was argued, That the Patent was void in its Creation. 1st. In respect of the Persons to whom it was made, sc. a † Corporation, which never was subject to an Use, and therefore not capable of such a Trust as to make whom they please Free of their Company, or exempt them from the Law, and in Effect to delegate to them a Power to exempt whom they please from the Law, and thereby delegate an Exemption to every one who should be Free of their Company. 2dly. Because it was for ever, and so not good in Point of Time. 3dly. That it was void, in Respect of the Places extending to great Part of the Realm, whereas *Dispensatio est provida Relaxatio juris pro Necessitate pensata*. Thurland, Windham, Ellis. and Turner Ch. Baron held, that the Patent was never good; and grounded themselves much upon the Reasons before alleg'd: But the 8 others held it good in its Creation. Lev. 217. Trin. 19 Car. Thomas v. Sorrel.

See S. C. argued by the Judges Freem. Rep. 85. pl. 105. and Ibid. 115. pl. 137. Ibid. 128. pl. 150 says, that Turner held that the Patent was good in its Creation. And Ibid. 137. pl. 159. argued by the two Chief Justices. — S. C. argued by Vaughan Ch. J. Vaugh. 330. to 359. wherein Matters which may or may not be dispensed withal by the King's

Prerogative, are very minutely treated of. — Hard. 443. to 451. seems to be S. C. by Name of Thomas v. Waters — S. P. Ibid. 464. Thomas v. Boys. — * Turner Ch. B. took Exception to this Plea; for the Defendant ought to have pleaded the Special Matter; because when an Information or Action is brought upon any Statute, if the Defendant be discharged by any Proviso therein, he may give it in Evidence; but if it be any Foreign Matter, even tho' it be a Licence pursuant to a Proviso of that Statute, he must plead it. And Hale said, that a Licence pursuant to a Proviso, is all one as a Proviso, and so might be given in Evidence. Freem. Rep. 129. Mich. 1673. Thomas v. Talmarsly, but seems to be S. C. And says that this Exception was not taken Notice of by Counsel or Judges till Turner argued, and who was the 8th Judge that argued.

† Many Precedents of Licences to Corporations, Non Obstante Statutes, are mentioned Vaugh. 252 to 254.

19. But it was agreed, That this Non Obstante in the Patent of King James could not dispence with the Statute of Car. 2. made after, notwithstanding the Words (Or any other Statute made or to be made.) Ibid. 218.

20. And it was agreed by all (except Thurland) That the Proviso in the Statute of 12 Car. 2. exempts the Vintners of London out of this Statute.

tute, because it was a Privilege lawfully used by them before the Statute; and thereupon the Record was remitted out of the Exchequer into B. R. and there, upon Motion of Levins, Judgment was entered accordingly. Ibid. 221.

21. 1 W. & M. Stat. 2. Cap. 2. S. 1. Enacts that *no Dispensation by Non Obstante of any Statute shall be allowed, except a Dispensation be allowed in such Statute, and except in such Cases as shall be specially provided for during this Session of Parliament.*

22. The Statute of 5 Eliz. enrolls *Minners to take Apprentices, and enacts that such Apprentices shall be bound by their Covenants, as Apprentices in London are by their Custom there, the Indentures being inrolled in the next Will Corporate.* It was resolved, 'That the King cannot alter the Place of the Inrolment, but they shall be inroll'd according to the Statute, otherwise the Covenants shall be at Common Law, and the Apprentices not bound by them. 3 Lev. 389. Pafch. 6 W. & M. C. B. Poulton v.

(Y. a. 2) Non Obstante. *Good.* In what Cases the King may dispense.

Br. Prerogative, pl. 57. cites S. C. S. P. Tho' there are Statutes which ordain that such Patents shall be void, yet with a Clause of Non Obstante they are good, and to be allowed. 1. **T**HE King granted the *Sheriffalty* of the County of N. to the Earl of N. for Term of Life, with all Proffits thereunto appertaining, rendering 100 l. per Annum, abique aliquo [alio] reddendo: And it was agreed, that it may be granted for Term of Life, or in Fee; and there was a Clause of *Non Obstante to dispence with the Statutes of 23 E. 3. cap. 7. and 43 E. 3. cap. 9.* which will, that none shall be Sheriff above a Year. Br. Patents, pl. 109. cites 2 H. 7. 6.

2. And per Ratcliff, The King by his Prerogative may by the Clause of Non Obstante dispence with *the Certainty and Value of the Land* granted by Patent, and of *the Shipping of Wool*, or of *Charters of Murder* being void for not finding Sureties. Br. Patents, pl. 109. cites 2 H. 7. 6.

Serjeant Hawkins says, Where a Statute expressly, that the King's Charter against the Purport of it, whether with or without a Clause of Non Obstante, shall be void, it is said by Sir Edward Coke, that no Clause of Non Obstante can dispence with it, unless to tend to restrain some Prerogative, solely and inseparably incident to the Person of the King, as the Right of Pardoning, or of Commanding the Service of the Subject for the Publick Weal, which being, as he seems to argue, founded on the Law of Nature, are so far inseparable from the King, that by a Clause of Non Obstante he may dispence with any Statute whatsoever, which tends to deprive him of them. And on this Ground the Resolution of the Judges in the Year-Book of H. 7. is said to be maintainable, whereby it was adjudged without any Difficulty, That where the Statute of 23 H. 6. cap. 8. expressly enacts, That Patents to Sheriffs to continue longer than a Year, shall be void, and the Party disabled to bear the Office of Sheriff, notwithstanding any Clause of Non Obstante, yet the King by the Clause of Non Obstante, might make a good Patent of such Office for Life, which is in Effect to say, that let there be never so good Reasons for the making a new Law for the Restraint of the Prerogative in any Particular relating to the Service of the Subject; yet it is not in the Power of the Legislature to make such a Law; and yet no one will deny, that wherever the Law of Nature leaves a Matter indifferent, there the Law of Man ought to prevail: Neither is there any Pretence to say, that the King has a Right by the Law of Nature to appoint Sheriffs, since it is plain that before the Statute of 9 E. 2. the Freeholders chose them, unless they had a Fee in their Office. And what Reason can there be, that the Statute Law, which gives the Crown the Power of making Sheriffs, may not also qualify that Power, as shall be thought convenient? But it is observable, that the Resolution above mentioned does not go upon any particular Reason, which may distinguish the Case of a Sheriff from any other Case, but only on the King's Power by Non Obstante to dispence with the Statutes concerning the Transporting Wool, the Pardoning of Murder, and the Expanding the Quantities of the Land granted by the King's Patents, and such like, which because they may be dispenced with by Clauses of Non Obstante, it is taken for granted, that the Statute of 23 H. 6. might as well be dispenced with by them, as if it were a plain Consequence, that because Statutes which say nothing concerning the Clause of Non Obstante may be dispenced with by it, therefore a Statute

expressly provides against it, may also as well be dispensed with by it. 2 Hawk. Pl. C. 397. 391. cap 37. S. 29.

3. The King cannot dispense with any *to do a Nuisance in the Highway*; and if he does, such Dispensation is void. Dav. Rep. 75. a. Patch. 9 Jac. C. B. in the Case of Commenda, cites 11 H. 7. 12.

4. 'Tho' the King may dispense with a Statute, which prohibits an *indifferent Thing to be done*, yet he cannot change the Common Law by his Patent. Dav. Rep. 75. b. cites 37 H. 8. Br. Patents 100. 6 H. 7. 4.

Where a Statute is made only in hate of the King,

and not to abridge his Prerogative, it was adjudged that the King may dispense with it. 2 Mod. 263 Trin. 29 Car. 2. in the Exchequer, Arris v. Stukely.—But the King cannot dispense with the Common Law with a Non Obstante. Dav. Rep. 75. b. Patch. 9 Jac. C. B. in the Case of Commenda; cites 4 Coke 35. Bozon's Case.

5. The Office of the *Almager* was by several Statutes prohibited to be granted without a Bill sealed by the Lord Treasurer, and sent by him to the Court of Chancery, as had been accustomed, or otherwise it should be void. Queen Mary granted the said Office de Gratia speciali, certa Scientia, & inero Motu, to one Ward for 21 Years, without any such Warrant. Adjudged by all the Justices de Banco, that the Grant was void, tho' a Clause of Non Obstante to any Statute is contained therein; and that by Reason of its not being shewn to the Court that such Clause was in the Grant. Dyer 303. pl. 48. Mich. 13 & 14 Eliz. Ward's Case.

S C. cited Hob 146. Mich. 10 Jac Per Hobart Ch. J. in Case of Colt and Glover v. the Bishop of Coventry and Litchfield.

6. When the Words of a Grant are not sufficient *ex di Termini* to pass the Thing granted, but the Grant is utterly void, there any Non obstante cannot make the Grant good; but in Case of Grant of Land which is in Lease for Life, or for Years, there, by the Grant of the Land the Words are *ex Vi termini* sufficient to make the Reversion pass; but the Law requires that the King be not deceived in the Thing granted, and therefore this is supplied by a Non Obstante. 4 Rep. 35. b. 36. a. Mich. 26 & 27 Eliz. B. R. in Bozon's Case.

S C. Godb. 35. Mich. 27 Eliz. B. R. by Name of Futter and Borome's Case.

7. When the King by the Common Law cannot in any Manner make a Grant, there a Non Obstante of the Common Law will not, against the Reason of the Common Law, make the Grant good. But when he may lawfully by the Common Law make the Grant, but the Common Law requires, that he be so instructed that he be not deceived, there a Non Obstante supplying it stands with the Reason of the Common Law, and shall make the Grant good. Resolved 4 Rep. 35. b. Mich. 26 & 27 Eliz. B. R. Bozon's Case.

S C. cited by Hobart Ch. J. Hob. 220. in Case of Needler v. the Bishop of Winton. —S C. Godb. 35. Mich. 27 Eliz. by Name of Futter and Borome's Case.

8. If the King grants a Protection in *Quare Impedit*, or *Affise*, with Non Obstante of any Law to the contrary, this Grant is void; for by the Common Law Protection does not lie in any of those Cases for the Loss which may accrue to the Plaintiff by such great Delay; and therefore the Non Obstante cannot avail, when by the Common Law the King cannot grant it. Resolved 4 Rep. 35. b. Mich. 26 & 27 Eliz. B. R. in Bozon's Case.

S C. Godb. 35. Mich. 27 Eliz B R. by Name of Futter and Borome's Case.

9. A. pleaded his Pardon for the Murder of B. wherein the King pardoned *Feloniæ & feloniam Interfectorem* Non Obstante the 13. Rich. 2. before which Statute Murder was pardonable by the Name of Felony, which was adjudged good; but if it had been without a Non Obstante, it would have been void, because by that Statute the Pardon of Murder is prohibited. Mo. 752. pl. 1033. Hill. 1 Jac. Lucas's Case.

S P. 3. Mod. 37. 38. Mich. 35 Car. 2 B R. The King v. Conny and O'brian, where such a Pardon was

held good by the whole Court; and Jeffries Ch. J. said, that he had proposed this Case to all the Judges of England, and they were all of the same Opinion, and that he remembered *Whitely's Case*, where a Pardon in general Words was allowed

Serjeant Hawkins says, It so fully appears from the express Words of 13 R. 2. That the King's Pardon of Murder, Rape or Treason cannot be good without a Clause of Non Obstante, that he says he does not know that it has ever been disputed. But it has been often formerly adjudged, That a Murder might be well pardoned under the general Description of a Felonious Killing, if the Charter had the Clause of Non Obstante of this Statute; which Construction seems in a great Measure to evacuate so excellent a Law, by barely changing the Form of the Charter; but it seems difficult to give a good Reason why this Statute should so easily be evaded, which was made for the Prevention of such great Mischiefs, and no way tend to abolish the King's Prerogative, but only to put such a Restraint upon the Abuse of it, that every one must own it to be reasonable. But if such Opinions were founded upon the King's Power of dispensing with Statutes, they seem to have been of little Force since the Statute of 1 W. & M. Sess. 2. cap. 2. by which it is declared and enacted, That from and after that Session no Dispensation by Non Obstante of, or to any Statute, or any Part thereof, shall be allowed &c. 2 Hawk. Pl. C. 386. cap. 37. S. 17.

Vaughan Ch. J. said, That the Distinction between *Malum Prohibitum* and *Malum in se*,

10. The King may dispense with *Malum Prohibitum* before the Offence is committed, and pardon it after it is committed; but he cannot dispense with *Malum in se* before it is committed, but he may pardon it afterwards. By all the Judges of England. Jenk. 307. pl. 83. cites Hill. 2 Jac. 7 Co. 36. b. &c. The Case of Dispensations.

Malum in se, was of little Use, if not rightly understood; for every Action in it self is good, and the Evil of it is, that it is prohibited by some Law; for Sin is the Transgression of a Law. But he said, 1st. That what we call *Malum in se*, is either that which the very Term implies to be unlawful, as Murder is Unlawful Killing, Adultery is Unlawful Copulation; and these can by no Law be made Lawful; and much less can the King dispense with them; for such Laws would certainly be void, because there is a Contradiction in the very Term; for it is impossible that Murder, which is the Unlawful Killing of Man, should be Lawful, tho' a Law might be made that it should be Lawful for such and such Causes to take away the Life of a Man, which to do, as the Law stands now, would be Murder. And a Law might be made, that she that is the Wife of A. should be the Wife of B. and then it would be no Adultery for B. to lie with her. 2d. Another Sort of *Mala in se* are such as the Law of the Land doth admit to be prohibited *Jure Divino*; for these can, by no Human Law, be dispensed withal; for whatsoever may be made Lawful by any Human Law, is not *Malum in se*. The true Difference where the King may dispense, and where he may not, is not when it is *Malum in se*, and when it is *Malum Prohibitum*; for there are some *Mala Prohibita* by Statute, that the King may dispense with, and others that he cannot. Freem. Rep. 137. 138. Hill. 1673. in C. B. Thomas v. Sorrell.

Neither doth it make any Difference, when the Law dispensed with is Capital, or when it is less Penal; for there are some Capital Laws that he may dispense with, as 3 Inst. 74. Freem. Rep. 138. Thomas v. Sorrell.

11. A Law which prohibits a Tort and Injury to a third Person, cannot be dispensed with. Dav. Rep. 77. a. Pasch. 9 Jac. C. B. in Ireland, in the Case of Commenda.

12. Upon a Purview in the Statute of Westm. 2. cap. 10. there was great Question whether the King might dispense with that Law, and give a further Day than is thereby prescribed; and in the End it was resolved that he might for the Advancement and Furtherance of Justice. 2 Inst. 377.

But see 1 W. & M. Sess. 2. cap. 2. 13. The Statutes of 2 E. 3. 10 E. 3. 14 E. 3. 13 R. 2. ordain that the King's Pardon of Notorious Felonies, Rapes, Murders, should not be granted or allowed, altho' it hath the Words of Non Obstante any Statute; yet Patents of Pardons of such Offences were allowed with a Non Obstante any Statute, and notwithstanding any Cause to defeat the Non Obstante. Mr. Jenkins says, In his Time no such Pardon was pass'd and allowed (that he ever heard of) without the Judges Certificate, before such Pardon was granted. If any such Pardon be pleaded before any Judge, he ought not to be *Tam fracti abjectique Animi*, to allow it immediately; if he does so, he is not worthy to be a Judge; he ought to reprieve the Prisoner, and signify the Circumstance of the Offence to his Majesty: And upon this Right shall be done with Regard to the Publick Good. Jenk. 308. pl. 84.

14. A Non Obstante in the Patent helps the Non-recital of Leases of Record. Jenk. 303. pl. 77. Baron Blague's Case.

15. The King cannot dispense with the Laws of Maintenance, Forcible Entries, carrying Distresses out of the Hundred &c. the Reason is not because they are *Mala in se*, but because the Party that is grieved hath by the Law an Action given him; for it is not *Malum in se* to maintain a lawful Suit, nor to enter forcibly where a Man hath Right &c.

&c. Per Vaughan Ch. J. Freem. Rep. 138. 139. Hill. 1673. C. B. Thomas v. Sortell.

16. There are some Cases wherein the King cannot dispense. 1st. *Mala in se*, such Things which by the Law of God or Nature are evil, antecedently to any Human Law; nay, the King cannot dispense with a Law made for the Punishment of any such Offence, as a Rape is Felony by the Law, the King's Dispensation will not make it none, and that answers the Cases of Simony. 2^{dly}. Where the *Subject hath a particular Interest or Damage*; and therefore the King cannot dispense with a Nuisance, and the Statute of Usury. 3. Where there is a *Precedent Disability*; and therefore where a Man * buys any Office within the Statute of E. 6. the King's Dispensation will not avail him, because by the Contract a Disability is created in him. Per Herbert Ch. J. But if he got the Dispensation before, and contract afterwards, it seemed to him that it was good. And he said he knew no Case that did not come under one of these Heads, but that the King could dispense with it. Freem. Rep. 493. Pasch. 1682. in Sir Edward Hale's Case.

* S. P. By Vaughan Ch. J. Freem. Rep. 139. in Case of Thomas v. Sortell.

17. H. 8. granted the Manor of S. with the Appurtenances, and then followed these Words, viz. *All which are of such a yearly Value, as is express'd in such a Particular*, with a *Non Obstante of any Misrecital of the true Value, or that they were of greater Value*. The Value was not truly express'd in the Particular; but Hale Ch. B. held the Grant good; he said that the Reason why a Mistake in the Consideration, or in the King's Title, or the Non-recital of an Estate or Lease in Being, shall vitiate the King's Patent is, because by his Prerogative he ought to be truly informed of his Case; but it is otherwise in the Case of a common Person, whose Grant is to be taken most strongly against himself, and that here the Non Obstante aids those Defects; and it is the proper Office of a Non Obstante to do so, as appears in *Walsingham's Case*; and that without Doubt, if there had been such a Non Obstante in the Patent in *Arthur Legate's Case* after the Clause, *Quæ quidem omnia sunt concealata*, Non Obstante that they are not concealed, all would have pass'd which was comprized in the Patent; to which all the Court agreed. Hard. 231. Trin. 14 Car. 2. in the Exchequer. The Attorney General v. Hungate.

18. 14 R. 2. enacted, That no Customer or Comptroller should have any Office in the Customs for Life, but only during the King's Pleasure. In 12 Car. 2. the King granted the Office of Comptroller of the Customs in the Port of Exeter to R. S. and T. S. Durante beneplacito. R. S. died. Two Years after the Death of R. S. the King granted the Office to A. [for Life, as it seems, tho' it does not appear in the Case] with a general Non Obstante of all Statutes, but without any Mention of this Statute in particular; and it was insisted that this Statute being made for the Publick Good, the King cannot by any Non Obstante dispense with it. But afterwards the Court gave Judgment for the Plaintiff, and held that the King might dispense with this Statute; for the *Subject had no Interest, nor was he any ways concerned in the Prohibition*; that it was made only for the Ease of the King, and not to abridge his Prerogative; and that the General Clause of Non Obstante aliquo alio Statuto was sufficient. 2 Mod. 260. 263. Trin. 29 Car. 2. in the Exchequer. Arris v. Stukely.

19. And by the like Reason he might dispense with the Statute of 4 H. 4. 24. That a Man shall hold the Office of Almoner without a Bill from the Treasurer. Ibid.

20. And with the Statute of 31 H. 6. 5. That no Customer or Comptroller shall have any Estate certain in his Office. Per Cur. for the Reasons above. Ibid. in the Case of Arris v. Stukely.

21. In many Cases the Dispensation of the King by a Non Obstante is good; As where a Statute prescribes the Form of the King's Grant, where it doth not directly prohibit a Thing, but only under Pain of a

Forfeiture; but if it be *direct & pro Bono Publico*, there a Non Obstante is not good; he can't dispence with the Statute of 31 Eliz. against Simony; for the Party being disabled by an Act of Parliament, can't be enabled by a Non Obstante. He can't dispence with the Statute of Leases of Ecclesiastical Persons, nor with the Jurisdiction of the Admiralty encroaching on the Common Law; for the *Foundation of a Non Obstante* is in the King's Prerogative, and is *current in his Grants*; but in those Statutes the Subject has an Interest. Arg. 2 Mod. 261. Trin. 29 Car. 2. in Exchequer. in Case of Arris v. Stukely.

(Z. a.) Officers of the King. What Things they may do
Ex Officio.

Sec (F. b.)
pl. 1. & 9.
and (G. b.)
pl. 1.
Mo. 476.

1. **N**O Officer which the King has, nor all together, may Ex Officio dispose of the King's Treasure, tho' it be for the Honour or Profit of the King himself. Co. 11. Count Devon 91. b.

They cannot *without the King's own Warrant*. 11 Rep. 92. Earl of Devonshire's Case.

(A. b.) Seals. The *Antiquity* of the Seals.

1. **M**ICH. 14 Jac. B. R. upon Evidence at the Bar in a Case between Sir *Carew Reynell and Whitmore*, where Issue was, Whether the Abbot of Westminster, before the Dissolution, held Idea of all Actions personal under 40s. (which Court, after the Dissolution was granted to the Dean and Chapter of Westminster) there was shewn in Evidence an Intepeximus by R. 2. of the Patent of King Edward the Confessor, by which he granted to the Abbot of Westminster Socam & Sakam (hoc est, Consuance of Pleas) and at the same Time a Patent of King William the Conqueror was shewn, Ann. 10. of his Reign, well wrote, and sealed with a fair Seal of Wax, which had an Inscription; and upon the one Part of the Seal is the Image of a * Man having an Ear of Corn in one Hand, and a Cross in the other Hand; and upon the other Part of the Seal is the Image of a Man riding upon a Horse; and by this Patent he confirms the Privileges, granted by the said Patent of Edward de Soca & Saka; and those Privileges were confirmed by diverse Popes, as was written upon the Back of this Patent, scilicet, By Innocent the 2d. by Eugenius the 3d. by Adrian, Alexander and Clement. Nota by those Patents the Antiquity of the Law of Patents with Seals. Mr. Floyer of Devon has a Grant of Land by Rivers Earl of Devon under his Seal of Wax fair and laced, in Time of King Stephen, and a Confirmation of it by another of the Earls, in Time of King John.

2. Vide Speed. 415. 418. b. says, that William the Conqueror used to seal his Charters, which was circumscribed of one Part, that he was Normannorum Patronum, and of the other Part, that he fuit Rex Angliæ.

3. William the Conqueror granted to the City of London their ancient Liberties, by a Charter sealed with green Wax. Speed. 424. b.

4. And another Charter of his is there cited, the Wax whereof was bitten with his Tooth in Token of Sooth.

5. The Saxons were wont to seal with gilded Crosses, and such like Marks. Speed. 424.

* Fol 181.

6. R. 1. sealed his Charters with a Seal of Arms, and he was the first who sealed with a Seal of Arms. Speed. 479.

7. R. 1. upon his Return from Jerusalem changed his Seal; for where before it was 2 Lions Rampant Combating, now he changed it into three Lions Passant. Speed. 479.

8. There is in the Study of Sir Robert Cotton a Patent (which he had seen) of King William the Conqueror, under such Seal as is above said, to be put to the Grant to the Dean and Chapter of Westminster, which was made to the Abbot of Battel, and which was the Charter of their Foundation. And there is another Charter of King William Rufus under his Seal to the same Abbot. Vide Janus Anglor. 67. 68. of the Antiquity of Seals of War or Relations Ecclesie.

9. On the 11th Day of June 43 E. 3. the King's Great Seal was safely laid up, and another seal, engraven with the Style of France, was taken and used, and sundry Patents, Charters and Writs therewith sealed; and the same Day were all other the King's Seals in like Sort changed. Prynn's Cott. Rec. Abr. 108.

(B. b.) The Diversity of Seals, and what.

1. THERE is Mention made in ancient Books and Records of Writs under the Targe, and without the Targe. 17 E. 3. 59. b. A Man had Writ of Scire facias without the Targe.

2. It seems that by Writs under the Targe is intended Writs sealed with a Part of the Great Seal of England, scilicet, that Part which has the Sculpture of the Target, and is so called from the Picture of the Target, which is made upon the War of the Writ by the hind Part of the Seal.

3. There is Mention made of Writs sub pede Sigilli, as of Court-writs.

4. It seems by this is intended, when the Writ has the Print of the Foot of the Great Seal.

5. There is Mention made sometimes of Writs under the Half Seal, as 3 H. 6. cap. 5. where it is enacted, That all Sentences given in a Marine Cause upon Appeal to the Queen in Chancery by such Commissioners or Delegates, which shall be nominated by the Queen and her Successors, by Commission under the Half Seal, as it hath been heretofore used in such Cases, shall be final &c.

6. There is a Seal for the County Palatine of Lancaster, and another for the Duchy (i. e.) such Lands as lie out of the County Palatine, and yet are Part of the Duchy; for such there are, and the Dukes of Lancaster held them, but not as Count Palatine, for they had not Jura Regalia over them. It is for this Reason that the King may make a Corporation by the Seal of the County Palatine, within the County Palatine; but he cannot grant or make a Corporation by the Duchy Seal within the Duchy Lands. 3 Salk. 111. Hill. 2 W. 3. B. R. in Case of Cotton v. Johnson.

S. P. 2 Inst. 1236. Duch. 9 W. 3. in Case of Atill v. Clerk.

Fol. 182

See (P. a. 6)
pl. 13. — (E.
b. 2. s. d. 3)
* The Great
Seal is Chert
Recd. 2 Int.
552.

(C. b) King. Grant. Seal. *What Things ought to be granted under the * Great Seal.*

1. **BY** the Common Law no Grant of the King is available or pleasurable but under the Great Seal of England. Co. 2. Lane's Case, 16. b. per Curiam resolved.

At the making of this Statute, 28 E. 1. cap. 6. *Henceforth no Writ concerning the Common Law shall be awarded under the Petit Seal.*

had three Seals. 1. Magnum Sigillum, the Great Seal. 2. Parvum Sigillum, the little or Petit Seal. 3. Signetum, the Signet. The Great Seal is in the Custody of the Lord Chancellor, or Lord Keeper of the Great Seal; and there is a special Officer in the Court of Chancery, called Sigillor, who hath the sealing of Writs, and other Things that pass the Great Seal. Parvum Sigillum, the little or Petit Seal, sometime called Keeper of the Privy Seal; this Seal is in the Custody of the Clerk of the Privy Seal, sometime called Keeper of the Privy Seal, after called Lord Privy Seal, of whom Fleta says thus: Custodi sigilli privati associantur Clerici honesti, & circumscripti Domino Regi jurati, qui in legibus & consuetudinibus Anglicanis notitiam habeant plenior, quorum Officium sit supplicationes, & querelas conquirentium audire & examinare, & eis super qualitatibus Injuriarum offerarum debitum Remedium exhibere per brevia Regis. By this ancient Writer three Things are to be observed; 1. That the Clerks Associates to the Keeper of the Privy Seal are those that we now call the Masters of Requests, Magistri a libellis supplicum, whose Office is here lively portrayed out, viz. quorum Officium sit supplicationes & querelas conquirentium audire & examinare. 2. Of what Quality ought these Masters of the Requests to be? They must have three Qualities. 1. They must be * honesti & circumscripti. 2. Domino Regi jurati. 3. Qui in Legibus & Consuetudinibus Anglicanis Notitiam habeant plenior. 3. To what end did they hear and examine the Matters contained in these Petitions? Ut eis (id est) conquirentibus super qualitatibus Injuriarum offerarum debitum Remedium exhibere per breve Regis. So as their Office was, that being learned in the Law, they should direct the petition to the King to take their Remedy by the King's Writ, that is, by original Writ in the Chancery. And hereby it appears, that this Act is but an Affirmance of the Common Law, for no Writ before this Act could have been sealed by the Privy Seal. 2 Int. 554, 555. cap. 6. — * Fleta. 2 lib. cap. 15. S. 1.

This Act says not, That all Writs which concern the Common Law shall pass under the Great Seal, but *no Writs shall pass under the Privy Seal which touch the Common Law*; For it is to be known, that the Court of the King's Bench, and the Common Pleas had, at the making this Statute, several Seals, whereby they sealed Judicial Writs. As the Seal belonging to the Court of King's Bench is in the Custody of the Ch. J. and so likewise the Seal belonging to the Court of Common Pleas is in the Custody of the Ch. J. of that Court, and the Seal belonging to the Court of Exchequer is in the Custody of the Chancellor of that Court. Ad Cancellarium Scaccarii pertinet Custodia sigilli Regis. * Officium Cancellarii est sigillum Regis Custodire, simul cum contrarotulis suis pro profectio Regis, and these Seals are Incidents inseparable to the said Courts for the sealing of all judicial Writs &c. which, for Administration of Justice distributive to all Men, are respectively under the said Seals, and without which the Courts cannot administer Justice; and therefore the Profits coming of these Seals have been letten and demised of ancient and latter Times, but the Seals themselves were never demised, or letten, nor could be, nor any other Keeper appointed to be Keeper of them, than has been Time out of Mind. 2 Int. 555. cap. 6. — * Fleta. 2 lib. cap. 29.

So of War-
rant of Es-
seign de Ser-
vicio Regis.
Ibid.

3. Note per Cur. Arguendo in Writ of Escheat, that Protection upon Privy Seal is not good; For it ought to be under the Great Seal. Br. Protection, pl. 13. cites 35 H. 6. 2.

4. 4 H. 7. cap. 14. *All Grants and Writings of Lands, and other Things pertaining to the Earldom of March, shall be under the Great Seal, and not under the Special Seal.*

Ibid Marg.
says, It ap-
pears suffi-
ciently, that a
Grant under
the Great
Seal is good;
For in the
Act is a Pro-
viso, that
Tenure in
Capite shall
be reserved
in all Grants
of any * In-

5. The Statute of 27 H. 8. of Establishment of the Court of Appointments enacted, That all Patents to be made for Life or Years, of any Office concerning the Lands of the Court, shall be sealed with the Great Seal of that Court &c. The Honour of Petworth in Suffex was by Act of Parliament within the Survey of that Court. The King granted the Office of Steward, and diverse other Offices of the said Honor, to the Earl of Southampton for Life by Bill assigned, which passed under the Great Seal in Chancery. And whether this Grant under that Seal was good or not was much doubted, by reason of the above Clause. Diverse Serjeants thought it the surest Way to have it under the Seal of Augmentation, because of the Word (shall) which is a Word obligatory, and, if it were, compulsory; but some thought the Grant under the Seal of the

(Continued)

Chancery good in Law ; For Bromley said, That if it be enacted by Parliament, that the youngest Son shall have Appeal of the Death of his Father, this does † not exclude the eldest Son of his Suit, because there are *not any Words of Restraint*. D. 50. pl. 1. Mich. 33. H. 8. Lord Southampton's Case.

by such Lands] Rast. Stat. 28. Paragraph 2. —† S. P. Arg. and resolved, that in the 1st Case in D. 50. a Demite made under the Great Seal of Lands within the Survey of the Cover of a Manor taken on by the Authority of the same Lock is not void. 11 Rep. 64. b. Mich. 12 Jac. in Dr. Foster's Case.

6. Great Seal shall be always *credited*, and where the Certificate under it is not strictly true, there is no Remedy but an Act of Parliament, or by Authority of the Chancellor of England, to cause the Parties to bring the said Exemplification with them into *Chancery*, there to be *cancelled*, or remain with &c. as was said in the *Duke of Norfolk's Case*. But in Exemplification under the Seal of C. B. or B. R. or Exchequer, it is otherwise ; For they have not such Force in themselves, nor import such Truth ; per omnes Just. Dal. 19. pl. 4. 3 & 4 P. & M. Anon

7. H. 8. seised of a Manor as Parcel of his Dutchy of Lancaster, grants to the Fraternity of Walden two Mills &c. as *Parcel of the said Manor in Fee, reserving a yearly Rent of 10 l. and then grants the Manor and Rent to Ld. Audley in Fee*. Ed. 6. upon the Dissolution of the said Corporation, grants the said Mills to the Corporation of the Vill of Walden, reserving a Rent of 10 l. Nobis Hæredibus & Successoribus vel tali Capitali Domino ad quem &c. de jure pertinebit &c. It was held, that the Manor and Rent were not passed together by the Grant to Ld. Audley, but severed. For the Manor, with its Rights, Members, and Appurtenances, was granted under the Dutchy Seal, by which the Rent could not have passed, and the Rent was granted under the Great Seal, which otherwise could not have passed at all ; and for this Reason it was adjudged, That the Corporation of the Vill of Walden should pay a Rent of 10 l. to the Crown, over and above the Rent reserved to Ld. Audley, which was not due to him as Capitalis Dominus, by Reason of the Severance in the original Grant. Adjudged. Mo. 167. Mich. 26 & 27 Eliz, the Case of Saffron Walden.

8. The granting of *Reprisals extraordinary* is always under the Great Seal. 1 Molloy 28. cap. 2. S. 8.

(D. b) What Things *may* be granted under the Great Seal.

1. **A** Presentation to a Church, the Advowson of which belongs to the Dutchy of Lancaster, may be granted under the Great Seal ; For it is a *Manor* taken from the *Crown*, and not within the Statute of 3 H. 5. c. 10. 3a. 25. between the King Plaintiff, and the Bishop of Lincoln and King Defendants, per Curiam. Trin. 11 Ja. 23. adjudged same Case.

Ordinary, and does not concern the Inheritance ; and it was held such Presentation might be even by Parcel. Moor 8-4 Mich. 11 Jac. — But such a Grant of a *Benefice* of the Dutchy is not good, as has been adjudged. Mo. 8-4 cites Trin 8 Jac. Rot. 1811. — S. C. cited 2 Lutw. 1237 in Case of *Wright v. Clark* — If the King has an Advowson in right of the Dutchy, he may present the Clergy in right of the Crown. Cro. J, 248. per Coke J. Trin. 8 Jac. C. B. in Case of the King v. . . . [Which seems to prove the same Point, that a Presentation to a Church, Parcel of the Dutchy, may be under the Great Seal.]

S. C. cited 2
Law 1237
in Case of
tally v. Clerk.
Brenn. 1. 82.
the King v.
Jenett.
cites M. 15
Jac. S. P. ad-
judged.

2. But a Grant of the next Avoidance of such Advowson cannot be under the Great Seal, but ought to be under the Dutty Seal. D. 10. 3a. B. per Curiam.

3. A Presentation was made under the Great Seal to a Church, which the King had in Right of a Ward, and held good; for that he may make such Presentation either under the Seal of the Court of Wards or the Great Seal. Cro. C. 70. Mich. 3 Car. C. B. Stephens v. Potter.

(E. b) What Things done under the Exchequer Seal shall be good.

S. C. cited
Gibb 203
in Case of
Mills v.
Keyes

1. **T**HE King may make a Man his Bailiff of his Manor by Patent under the Exchequer Seal, and it shall be good. D. 5, 1a. B. between Tondington and Benson, per Curiam.

2. If A. makes a Lease referring Rent, and after is outlawed, and this found by Inquisition, the King may grant over the Benefit of the Outlawry to a common Person under the Exchequer Seal, and thereupon he may have Account for the Rent incurred after against the Lessee. Mich. 10 Car. B. R. between Culpepper and Cozemry, per Curiam, upon a special Verdict, and the Court then said, That this was the common Course of the Exchequer. Juratatur. Trin. 7 Car. Rot. 835.

On a special
Verdict it
was found,
that the King
made a Lease
for Life under

the Exchequer Seal, Remainder for Life, &c. *reservant sine usuali Rente*; and it was objected, that the Lease was not good, because a Freehold could not pass from the King, but by Patent under the Great Seal; but adjudged by all the Judges, that the Lease was good, and for the King's Benefit, that his Lands should not lie unletten. Cro. C. 513. Hill. 15 Car. B. R. Rot. 1252. Kemp v. Bernard.

4. 8 D. 6. 34. b. 3r. Leases, 71. Note, that the Order of the Exchequer is to make their Leases by the Word Commitimus: such Lands Habendum &c. Reddendo such Rent (Rent) this is a good Lease by the ancient Usage there.

Cro. C. 513.

S. C.

—Reynolds
Ch. B. doubt-
ed this Case,
and that
from the ge-
neral Tenor
of the Books,
the Usage
there must

5. A Lease for three Lives made by the King of Land Parcel of the Possessions of the Crown under the Exchequer Seal, though the Rent reserved be not averred to be the ancient Rent, yet it is good; Because it is the ancient Usage of the said Court of Exchequer, whereof all other Courts ought to take Consuance without Averment. Mich. 14 Car. B. R. between Kemp and Bernard, adjudged per totam Curiam upon a Demurrer. Juratatur Hill. 13 Car. Rot. 1252.

refer to the Manner of granting, and taking it so, he knows of no Authority to support such Grant; But if an Office for Life had been found to be an ancient Office, and to have been usually granted under the Exchequer Seal, it might be good; and the whole Court inclined, that an Office for Life granted must be under the Great Seal; but this being on the first Argument, Ld. Ch. B. said, he did not deliver it as his final Opinion Gibb. 294 in the Exchequer, Trin. 5 Geo. 2. Mills v. Keyes.

6. Co. 10. Drid. & Nap. 12. upon the Statute of 35 Ed. cap. 3. the Words (Confirmation of Letters under any Seal) are interpreted under the Exchequer or Augmentation Seal.

So where
the Queen
made a Lease
for Life on
Condition to

7. In an Information of Intrusion upon Demurrer the Case was, that the Husband devised to his Wife, who was an Alien, and by a Commillion under the Exchequer Seal, she was found to be so; by reason whereof the King was intitled to the Land, but it was said, that the

Inquisition was void ; because this is *Office of Intitling*, which should be under the Great Seal, but an *Office of Instruction* or *Information* may be under the Exchequer Seal. 5 Rep. 52. Mich. 29 & 30 Eliz. in Seacc. Page's Case.

the Exchequer Seal, it was found, that the Rent was not paid, and thereupon the Queen makes a new Lease. Upon a special Verdict in Trespass, the Plaintiff had Judgment for this Reason (among others,) That the Commission under the Exchequer Seal was not sufficient to find a Condition broken upon a Lease for Years, though upon a Lease for Years it might be found and in any County being an Office only to inform the Queen Cro. E. 855. Trin. 42 Eliz. Rot. 641. B. R. Parflow v. Corn.—Cites Patch. 27 Eliz. Knight v. Beech.

So a special Verdict in Ejectment found, that the Defendant, being indicted on a Statute 13 Eliz. for a *Prenunire*, made a Gift in Tail of his Lands, and was afterwards found Guilty ; and then by a Commission under the Exchequer Seal, it was found, that he was seized in Fee at the Time of the Offence committed, and that the Queen had granted the Lands to one under whom the Plaintiff claimed, and that the Defendant claimed under the Tenant in Tail ; Adjudged, that to vest the Lands in the King there must be an Office found by Inquisition under the Great Seal, without which the Freehold could not be deeded from the Party, and that the Inquisition under the Exchequer Seal is only an Information to the King and his Officers to put the Lands in Charge Cro. C. 172. Hill. 1 Car. Rot. 828. Grosse v. Gayer.—Jo. 217. Mich. 5 Car. B. R. S. C. by Name of Grosse v. Gayne.

8. If any *Manor or Land*, of whatsoever Value, comes to the King by *Attainder or otherwise*, the Custody thereof may be granted over under the Exchequer Seal by the Authority of the Lord Treasurer and Chancellor there without special Warrant ; For it is but a disposing of the Profits, because the King himself cannot manure it ; And it is always revocable, Si quis plus dare voluerit. Cro. J. 109. pl. 6. Hill. 3 Jac. B. R. per Popham, to which the other Justices agreed. Predyman v. Wodry.

therefore is grantable under the Exchequer Seal ; For it is as a Sale ; and therefore the Grant is good. Cro. J. 109. Predyman v. Wodry.

(E. b. 2) Dutchy Seal.

1. **I**N Quare Impedit it was agreed, that there was a Statute H. 5. that no Lands nor Tenements of the Dutchy of Lancaster might pass from the King but under the Seal of the Dutchy of Lancaster ; And therefore per Danby, If the King grants an *Advowson of the Dutchy under the Seal of the Dutchy*, and after confirms it by the Great Seal, this is a void Confirmation. Quære. Br. Patents, pl. 88. cites 32 H. 6. 22.

2. Where Leases are made of Lands which are newly annexed to the Dutchy of Lancaster, and lying within that County Palatine ; if they are sealed with the Seal of the Dutchy-Court at Westminster they are void, because by the Statute 37 H. 8. cap. 40. such Lands and Possessions must pass under the Seal of the County Palatine, and not under any other Seal, as it seems by the Intendment of the Act, though it be not fully so expressed. Dy. 232. pl. 7. Mich. 6 & 7 Eliz.

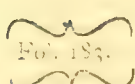
3. It was said by the Court, that a Grant of an Office of keeping the Courts of the Dutchy Land by Privy Seal is not good, but it ought to be by Dutchy Seal. Noy. 53. Ld. Willoughby v. Kempe.

4. A Question was, Whether the Grant of a Fair under the Great Seal was good, where the Queen was seized in Right of her Dutchy of Lancaster ? Or in other Words, Whether the Grant of this Fair shall be taken as part of the Possessions of the Dutchy, and so not pass but under the Seal of the County Palatine ? And adjudged, that a Grant under the Great Seal was good, because it was a Franchise created de Novo by Virtue of the Prerogative Royal, and cannot properly be

called a Possession of the Duchy. And though by the 3 H. 5. it is enacted, that no Grants of the Possessions of the said Duchy shall be made but under the Duchy Seal, this is to be intended of Things naturally arising from the Lands as Rents, Ways, Mills &c. which favour of the Land, and such Franchises were thereby preserved which were then in being; but this Grant of a Fair is a royal Franchise, and created de novo, and so not within that Act, and cannot pass by the Duchy Seal. 2 Lutw. 1233. to 1237, Mich. 10 W. 3. C. B. Astill v. Clarke.

5. Whereupon Treby Ch. J. observed, That there was a Difference between Possessions and Prerogatives; and that *Possessions* ought to pass under the Duchy Seal, as above, but *Royal Franchises* (as a Fair &c. out of the County Palatine, and within the Duchy) ought to pass by the Great Seal. 2 Lutw. 1237. Astill v. Clerk.

6. All Corporations made within the Duchy of Lancaster, and out of the County Palatine, by the Duchy Seal are without Warrant; For to make a Corporation is *Jus Regale*, and cannot pass by the Duchy Seal; But within the County Palatine, the King, by the Duchy Seal, may make a Corporation, because the Duke of Lancaster had *Jura Regalia*; per Treby Ch. J. in delivering the Opinion of the Court. 2 Lutw. 1237. in Case of Astill v. Clark.



* There are 4 Clerks of the Privy Seal, who give their Attendance on the

(F. b) King, Warrant. Seals, Privy. By what Warrant the King may do Things. * [Privy Seal.]

I. * **T**HE Warrant which is sufficient in Law to issue the King's Treasure ought to be under the Great Seal or Privy Seal. **Case of Devon. 92.**

Ld. Privy Seal: The principal Office and Charge of the Lord Privy Seal, and of his Clerks, is about such Times as pass by Bill signed, and are to go to the Great Seal; Of this you may read in the Statute 2 H. 3. cap. 11. & lib. 8. fol. 18 in Casu Principis. 2 Inst. 535. cap. 6.

* Chattels real, and Inheritances must pass by Grants under the Great Seal; Int Personal Things, as Disposal of Money, Horses, Armour &c. may pass by Custom by the Privy Seal. Arg. by Coke Attorney General. Mo. 4-6. pl. 681. in Case of the Queen v. Dodington. And he vouched a Precedent. 1 E. 4. Rot. 14. Inter Brevia coram Baronibus where the Sheriffs of London would have excused themselves of 14 l. disposed of by Command of the King under his Signet, and could not, but were forced to obtain a Privy Seal.

The Privy Seal is not sufficient Authority to dispose of the Queen's Money by the Lord Treasurer, unless where it is due; and he that receives Money out of the Exchequer by such Authority is accountable for it, and if he dies, his Executor shall answer for it as a Debt from the Testator. Cro. E. 545. Dodington's Case.

Money was never issued on the Great or Privy Seal; and anciently there were no Writs of Liberate for the Payment of Money on any Debt due from the Crown, or any Grants made of any Sums, but afterwards they were wont to grant Patents or Privy Seals to the Treasurer, giving him Authority to issue Warrants for the Money. Gilb. Hist. of Excheq. 143. — The Writs were anciently directed to the Treasurer and Chancellor, and therefore the Warrants are at present signed by the Treasurer and Chancellor, and mention the Authority of the Broad Seal by which he issues them. Ibid.

S. C. cited 2 Rep. 17 b Mich. 28 & 29 Eliz. in Lam's

Case, and says, That with this agrees 37 H. 6. 27. b.

Roll. Rep. 7. S. C.

2. The King may grant by his Letters Patents under his Privy Seal, to any to make a general Attorney in all Pleas. F. N. 26. b. Regis.

3. The King may grant an Obligation under his Privy Seal, because it is but a Chattel. D. 12 Ja. B. R. between Calver and Sherman, per Coke.

29 Eliz. in James Case.

shall not S. C. cited 3
Rep. 17, b.
Mich. 28 &
20 Eliz. in Lane's Case.

12. 12 R.

12. 13 R. 2. 1. *No Pardon of Treason or Felony shall pass without Warrant of the Privy Seal.*

13. The King by Privy Seal *licensed the Master of the Ordnance to take all unserviceable Iron Ordnance &c. upon a Suggestion, that those Things had been usually taken as Fees &c. belonging to his Office: Resolv'd, that because the Office itself was but newly erected, and so the Privy Seal was obtained upon a false Suggestion, the King was deceiv'd, and by Consequence the Privy Seal was void.* 11 Rep. 89. Hill. 4 Jac. Earl of Devonshire's Case.

Ibid. 395. Patch. 17. Car. 2. S. C. by Name of *H. Finchill, v. the Attorney-General, &c.* and the Composition made by the Court was confirmed

14. *The Forfeitures of the Sums on several Recognizances, for not appearing at the Sessions, was granted to T. S. by a Privy Seal; and the Question was, Whether the Court of Exchequer could compound those Forfeitures by Virtue of a Privy Seal granted to them before that to T. S. or whether the latter Privy Seal was not a Revocation of the former? But it was held clearly by the Court, that they might, upon good Matter in Equity, discharge those Debts, by Virtue of the Statute 33 H. 8. cap. 39. Hard. 334. Mich. 15 Car. 2. in the Exchequer. Mrs. Atke's Case.*

See (F. b.)

(G. b.) King. Seals. Signet.

See (F. b.) 1. **T**HE Warrant of the King, under his Privy Signet, is not sufficient to issue his Treasure. Co. 11. Earl of Devon. 92.

Rep. 92. a. Hill. 4 Jac. S. C. and says, that this appears by a Judgment in the Exchequer, in *Petition's Case. Hill. 1 E. 4 Rot. 14. in dorso, where such a Warrant, under the Privy Signet, to issue the Treasure of the King, was disallow'd. — * S. C. cited 4 Inst. 116. as Hill. 6. E. 4.

See Ne exeat Regnum. (B) 2. **T**he Privy Signet is sufficient to inhibit a Man to go over the Sea. F. N. 85. a.

1. — S. C.

cited 2 Rep. 17. b. Mich. 28 & 29 Eliz. in Lane's Case. — S. C. cited 11 Rep. 92. a. — The Law in some Cases taketh Notice of the Signet; for a Ne exeat Regnum may be by the King's Writ under the Great Seal, or by Commandment under the Privy Seal, or under the Signet; for in this Case the Subject ought to take Notice as well of the Privy Seal and Signet, as of the Great Seal; for this is but a Signification of the King's Commandment, and nothing passeth from him. But a Warrant under the Privy Signet to issue any Treasure is not sufficient, but there it ought to be either under the Great or Privy Seal.

See (F. b.) 3. **A** Discharge of a Debt due to the King under the Privy Signet is not sufficient. 1 E. 4. Ex parte Rememb. Domine Regine Rot.

Pl. 8. 14. Co. 2. Lane 17. b.

4 Inst. 55. 4. 11 R. 2. cap. 10. *The King's Signet, or Privy Seal, shall not be sent in Prejudice of the Realm, or Disturbance of the Law.*

5 27 H. 8. 11. *How and in what Manner the King's Grants, Writings, and Leases, shall pass the Privy Signet, the Privy Seal, and the Great Seal, and in what Time they shall pass those Seals; and the Forfeitures set upon the Clerks of the Privy Signet and Privy Seal for not doing their Duty; and what Fees they shall take for those Writings, and what Fees shall be paid to any Person for the same, and how and where such Writings shall come to the Great Seal, with an immediate Warrant, and not pass the Signet or Privy Seal, and what Fees shall be then paid therefore, and how and under what Seals the King's Leases, Grants, and Writings of Lands, or Offices of the County Palatine or Duchy of Lancaster shall pass; and what Grants, Leases, or Writings for the King may be made without his Warrants, and divers Articles at large concerning these Matters. For these see the Statute itself at large.*

If Letters Patents pass by Bill sign'd without Privy Seal, the Patent is subscribed Per ipsum Regem, (and then the Bill sign'd remains with the Chancellor for his Warrant) and when it passes by Bill sign'd, and by

Privy Seal also, then the Privy Seal remains with the Lord Chancellor, and the Bill sign'd remains with the Clerks of the Signet, and the Lord Privy Seal has an Extract thereof for him to make the Privy Seal

Seal by, and then the Letters Patents are *subscribed Per breve de privato sigillo*; and if the Words, *vis* (Auctoritate Parliamenti) be added, then it passes a cording to the Act of 27 H. 8. cap. 11. And when the King signs the Patent himself in the upper Part, and the Signature and the Grand Seal go together, then it is subscribed *Per ipsum Regem* with his own proper Hand. And when it is made by Authority and Consent of Parliament, then it is subscribed *Per ipsum Regem et totum Consilium in Parlamento*, or to such Effect. 8 Rep. 18. b. 19. a. Hill. 3 Jac. in a Note of the Reporter, in the Prince's Case.

6. At the making of the Statute of 28 E. 1. cap. 6. the King had another Seal, and that is called Signetum, his Signet. This Seal is ever in the Custody of the Principal Secretary. And there be four Clerks of the Signet, called *Clerici Signetti* attending on him. The Reason wherefore it is in the Secretary's Custody, is, for that the King's private Letters are signed thereunto. Also the Duty of the Clerk of the Signet is to write out such Grants or Letters Patents as pass by Bill signed (that is, a Bill superscribed with the Signature, or Sign Manual, or Royal Hand of the King) to the Privy Seal, which Bill being transcribed and sealed with the Signet is a Warrant to the Privy Seal, and the Privy Seal is a Warrant to the Great Seal. Such was the Wisdom of prudent Antiquity, that whatsoever should pass the Great Seal should come through so many Hands, to the end, that nothing should pass that Great Seal, that is so highly esteemed and accounted of in Law, that was against Law, or inconvenient; or that any thing should pass from the King any ways, which he intended not, by undue or surreptitious Means. 2 Inst. 555, 556, cap. 6.

7. An Accountant, who might have taken the Benefit of a general Pardon, had, within the Time limited by the Act, and before Notice of the Act, accounted for 700 l. and given Bond to pay it. He, by English Bill pray'd Relief, his Account being pardoned by the Act of Indemnity. Afterwards he obtained a Warrant from the King under the Privy Signet for a Decree by Confession, but the Court would not allow of it unless it were under the Privy Seal &c. Hard. 204 Mich. 13 Car. 2. in the Exchequer. Savory v. the Attorney-General.

8. In an Information ag'd at B. for Extortion, an Issue was joined; and the Day that the Jury were returned, the King sent a Writing under his Sign Manual to Sir Tho. Fanlhaw, Clerk of the Crown, to enter a Cesser of Prosecution. And Palmer, Attorney General affirmed, That the King might stay Proceedings; yet notwithstanding, the Court proceeded to swear the Jury, and said, They were not to delay for the Great or Little Seal; whereupon the Attorney entered a *Noli prosequi*. Vent. 33. Trin. 21 Car. 2. B. R. The King v. Benson.

9. King Ch. 1. granted to P. an Office *Durante beneplacito*. King Ch. 2. sends his Privy Signet to the Lord-Treasurer to confirm P. in this Office. It was agreed on all Hands, that the King's Privy Signet does but only intimate the King's Mind, but can transfer no Interest. Freem. Rep. 71 Hill. 1672. in Cane. King v. Foster.

10. The Attorney General said, That he never saw any Sign Manual but what was countersign'd by the Secretary of State, or the Lords of the Treasury; but that he had seen several not sealed with the Signet or Privy Seal, and that he had observed this Difference, viz. That where the Sign Manual was only a Direction or Commission to do a farther Act, as to make out Letters Patents, there it is only countersign'd, but not sealed. But where it is to be the Principal Act itself, there it is to be both sealed and countersigned. 9 Mod. 54. Trin. 9 Geo. in Cane. in the Case of Vernon v. Benson.

(G. b. 2.) *Grants of the King. Good or void. In what Cases in general.*

1. **T**HE Question being upon a Grant of the King: It was insisted, that the King's Grant shall be void in these following Cases, 1st, Where he is *misinform'd* in his Grant, as 1 Rep. 52. 2dly, *Misrecital* shall avoid it. As Mo. 318. Hob. 224. 243. 3dly, If the King be *deceived in Matter of Fact or Matter of Law*, it is void. As 10 Rep. 112. 1 Rep. 46. 4thly, *Want of Form* will avoid the King's Grant. As Hob. 243. 323. 1 Rep. 50. D. 124. 5thly, When the *Thing is in him, or comes to him in another Manner than he supposes*. As 4 Rep. 34. 1 Roll. 192. Mo. 888. Hob. 170. 1 Rep. 49. 2 Rep. 33. 11 Rep. 90. 2 Roll. 186. Hob. 323. On the other hand it was argued, that the King's Grant shall be good, 1st, If there be an *Original Certainty*, altho' there be a Mistake after. As 2 Cro. 34. 48. Yelv. 42. 3 Le. 152. 1 And. 148. 29 E. 3. 7. D. 83. Godb. 423. 10 Rep. 110. 10 H. 4. 2. 2dly, There is a Difference when the *Mistake relates to the Title of the King*, and when it is but a *Denomination of the Thing*. As 9 H. 6. 28. 8 H. 7. 3. 10 Rep. 110. 21 E. 4. 49. 3 H. 7. 6. 38 H. 6. 31. 9 E. 4. 11, 12. 3dly, The King's Grant shall be *construed liberally for his Honour*. As Statute 18. E. 1. 6 Rep. 6. 1 Rep. 43. Freem. Rep. 172. Trin. 1674. C. B. in the Case of the King v. Clarke.
2. A Grant to an *Alien* by the King, or to a *Man outlawed*, or to a *Vill* which is *not incorporated*, are void. And the same Law to a *Body* which is *not incorporated*. Br. Patents. pl. 44. cites 22 H. 7. 13. per Keble.

(G. b. 3.) Good. In respect of the *Matter or Manner*.

1. 11 R. 2. 8. **E**Naacts, That all Annuities, and other Things given or granted by the King, his Father or Grandfather, with this Clause, *Quousque pro statu suo aliter duxerimus ordinandum, shall be void, if other Things have been afterwards accepted by the Grantees thereof*.

The Mis-
chief which
was at the
Common
Law was in
the Ante-
dating of
Letters Pa-
tents, before
the Warrant

2. 18 H. 6. cap. 1. Enacts that every Warrant hereafter sent by the King, or his Heirs to the Chancellor of England for the Time being, the Day of the Delivery of the same to the Chancellor shall be entered of Record in the Chancery. (3) And the Chancellor do cause Letters Patents to be made upon the same Warrants, bearing Date the Day of the said Delivery in the Chancery, and not before in any w^{ic}. (4) And if any Letters Patents be from henceforth made contrary, they shall be holden as void, frustrate, and none.

came to the Chancellor to make the Letters Patents, as the Preamble of the Act shews. And because no Charter of the King should bear Date before the Time of the Delivery of the Warrant, therefore this Act was made, which remedies the said Mischief in making the Patent void, which varies from the Day of the Warrant enter'd, that is to say, in which it bore Date before the Day of the Entry of the Warrant received. But the Justices said, they were resolved upon two Points touching this Act: 1st, That the Patent is good, if no Warrant be made or sent; for the Great Seal, without other Circumstances, is sufficient to the Party to whom the Patent is made, and the Warrant is the Discharge of the Chancellor; for thereby he knows the Will of the King. 2dly, That if Patent bears Date after the Day of the Delivery of the Warrant, the Patent in such Case shall be good, in as much as it is out of the Intent of the Makers of the Act; for no Mischief in such Case was to the King, or to any other which needs any Reformation, but the Mischief was in the Dating of the Patent before the Delivery of the Warrant, as before is shewn. Pl. C. 491. b. 492. a. Mich. 18, & 19 Eliz. Ludford v. Gretton.

By this Statute the Letters Patents bearing Date another Day than the Day of the Entry of the Warrant (where there is a Warrant) is good and not otherwise. And if there is a Warrant, and the Day of the Delivery thereof is enter'd, and the Patent has no * Day of the Date, it is good, and out of the Words and Intent of the Act, and rests at the Common Law. And the Letters Patents by the Common Law were good, notwithstanding they had no Day of the Date, and now are, notwithstanding that they have in them no Place of the Date; Per Brown, quod Dier concessit. Pl. C. 232. 4 Eliz. in the Case of Willion v. Lord Barkley.—* S. P. 20. H. 7. 8.

3. If the King grants *Consuſance of Pleas* to one N. and does not say before whom it shall be held, the Grant is void; for the Grantee cannot make

make a Judge; But if he had Court before, there the Grant is good. Br. Patents, pl. 44. cites 2 H. 7. 13. per Kettle.

4. If the King grants Ward during the Nonage, and after special Livery is sued, this is void, and the Grant good. *Contra*, where the Grant is, As long as it shall happen to be in our Hands, there a special Livery made within Age, shall avoid the Grant. Br. Patents Pl. 47. cites 3 H. 7. 3. & 8 H. 4. Accordingly,

5. If the King gives Land to A. and his Heirs Males, this Patent is void; for if A. has only a Daughter, and dies, and this Daughter has a Son, the Fee should be in Abeyance; for the Daughter is the Heir; and if the Daughter dies, her Son should have the Fee: But the Law will not allow such ceasing and reviving of a Freehold. The Parliament may create such an Estate, but it can be done no otherwise. By all the Judges of England. Jenk. 199. Pl. 16. cites 18 H. 8.

But the King's Patent of Land to A. and his Heirs Habendum to him and his Assigns is a good Patent, and passes

the Fee Simple. Jenk. 283. Pl. 14. — Where the King's Patent creates a new Estate, of which the Law does not take Comfiance, as where the King gives Land to A. and his Heirs Males, or gives Land to his eldest Son, & ipsius & heredum suorum Regum Anglie filius primogenitis in regno Anglerum hereditarius successuris. These Patents are void. Jenk. 304. cites 18 H. 8.

6. Letters Patents are good in the following Cases, that is to say, Where no Warrant is made; And where Warrant is made and delivered, and no Day of the Delivery entered; And where Day is entered, and the Letters Patents bear Date after the Day entered. Resolved. Pl. C. 492. Mich. 18 & 19 Eliz. in the Case of Ludford v. Gretton.

7. The King may grant a Right of Entry and a Real Action; but such Grant must be conceived in special Words, setting forth how the Right of Entry is. Le. 21. Trin. 26 Eliz. in the Duke of Northumberland's, alias Doughty's Case.

3 Le. 168. in an Anonymous Case.

8. The King, seized of a Manor in Right of his Crown, did by his Steward grant Copyhold Lands, Parcel of the said Manor in Fee, and afterwards made a Lease of the same Lands under the Exchequer Seal for twenty-one Years &c. adjudged, that tho' no Grants of the King are available but under the Great Seal yet this Lease, under the Exchequer Seal, was good by the common Usage of that Court, though not particularly alleged; for the Course of every Court is as a Law, of which the Common Law takes notice, without alleging it in Pleadings. 2 Rep. 16. Mich. 28 & 29 Eliz. C. B. Lane's Case.

9. 25 Eliz. 3. Enacts, That all Letters Patents made by H. 8. since the 4th of the twenty-fifth Year of his Reign for the Foundation of any Dean or Chapter, or College, shall be adjudged Good.

The Right of all others, (except of Priors, Abbots &c. is saved.)

All Grants made by the Queen to others since the said Time, as also all others that should be made (by Force of a Commission then on Foot) before the End of this Session, or within one Year after shall be good.

This Act shall not extend to Letters Patents of Offices, nor of Concealments, except such Concealments only as are sold by Commissioners.

Neither shall this Act extend to make good Letters Patents heretofore adjudged void by any Court of Record at Westminster, or by Act of Parliament; neither yet those of Monopolies for Toleration of any Offence prohibited by any penal Law, nor of Lands where there is an Estate-tail in the Queen, unless such Estate be duly recited.

Here also the Right of others is saved.

10. King Edward 2. having granted the Manor and Castle of Skipton upon Craven to Robert Clifford in Tail, H. 6. granted to Thomas Lord Clifford (who was Heir of the Body of the said Robert) Reversionem Castri & Manerii præd. &c. Nec non Castrum & Manerium prædictum. It was held, that admitting the Grant in Tail should be void, yet the Castle and Manor should pass to Thomas Lord Clifford in Fee in Possession,

Lane 594. S. C.

The Words

(will and declare) are sufficient to amount to a Grant; and

such Words are always used in Patents and Franchises, being Things contingent, & de futuro; adjudged. 8 Rep. 73. b. in the Lord Stafford's Case.

tion, because the Intent of the King was to pass it, whether in Possession or Reversion. 8 Rep. 166. Mich. 7 Jac. Earl of Cumberland's Case.

11. It was resolved by Hubbard, Tanfield, Altham, Winch, Nichols and Haughton, that *Volumus* was a good Word of Grant, as Pigot was of Opinion, in 21 E. 4. 12 Rep. 120. Pasch. 12 Jac. in Dungannon's Case.

12. The King's Patent may be *without Date*; for he may resort to the Inrolment and Privy Seal, and so help it; but in such Case, if he surmise a false Date, the same makes the Patent void. Arg. Godb. 416. Trin. 21 Jac. in Case of Lord Zouch v. Moor, cites 21 E. 4. 45. and 20 H. 7. 7. 8.

13. A Grant of a *Rent-charge out of the King's Manor, with a Clause of Distress*, is a void Grant; for the King cannot be sued, nor can a Distress be taken upon Land in his Possession. Jenk. 112. pl. 18.

Jenk. 112. pl. 18. S. P.

14. If the King grants an *Annuity, without saying by whose Hands* it shall be received, it is void. Jenk. 208. pl. 41.

But where the King has an Estate in Fee or for Grants it Life, in any Land, and

grants it *Quam diu in Manibus nostris* fore contingerit, it is a void Grant; for such a Grant was never heard of, and it is not determinable by any Collateral Means. Jenk. 246. pl. 35.

17. A Patent of *Lands* in general, with a Restriction to a *Tenure*, or *Occupation*, or *Possession*, which is *false*, is a void Patent; otherwise of a Patent of the Manor of Dale, or any *certain Thing*, a false Addition does not vitiate the Patent in this Case; for the Addition is *Surplusage*. Jenk. 304. pl. 77.

(G. b. 4) Grant. Good in Part, and void in Part.

1. IF the King has two Manors, one for Life, the other in Fee, and the King grants these two Manors to A. for Life, and dies, the Grant remains good, as to the Manor in Fee. Jenk. 209. pl. 41.

2. A Patent may be *repealed* in Part, but this shall be only in *Clauses independent*. Per Hale Ch. B. Raym. 177. Pasch. 21 Car. 2. B. R. in Sackvill College's Case, cites Fitzh. Petition 19.

3. The King leased a Manor and Mines, and withal grants that the Vendee shall have the sole vending of Allom, reserving out of the Premises 10000 l. a Year to himself, and 1640 l. a Year to the Lord Abbot. The Question was, Whether this Grant, being void for Part, (viz. for the sole vending of Allom) shall be void for the Rest? It was held, that had it been in the Case of a common Person, it might be good for Part, and void for Part, altho' the Reservation was intire. But it was urged here, that the King is deceived, it being plain that he intended to grant the sole Vending of Allom, which he could not do. In answer whereto a Difference was taken, where the King is *mistaken in Matter of Fact*, there his Grant shall be void, but not where he *mistakes the Law*; and cited 6 Rep. 55. Lord Chandos's Case. But the Court seemed to incline, that the Grant was void, it appearing upon the Face thereof that the King was deceived in the very Substance thereof, and the Rent being reserved.

reserved out of the whole. Sed Curia advisare vult. 2 Freem. Rep. 17.
pl. 15. Hill. 1676. Lord Mulgrave v. Sir J. Mounson.

(H. b.) Office. Grant. In what Cases a *Grant* shall be
good before Office. 18 H. 6. cap. 6.

Pol 184.
See (1. c.)
pl. 9.

1. **I**F the King leases Land for Years reserving Rent to be paid at the Receipt of the Exchequer, or to the Hand of the Receiver, if the Lessee does not pay the Rent at the Day, the * Lease shall be void, by which his Estate is determined. Tho' it does not appear of Record that the Estate is determined, because it may be that he has paid the Rent to the Receiver in the Country, yet the King may grant the Land over before any Office found against. M. 32. 33. El. B. R. between Sir Moyle Finch and Throgmorton adjudged. Contra M. 2 Ja. B.

The Case was to this Effect, King Philip and Queen Mary leased for Years, rendering Rent at the Feasts of the Annuncia-

tion, and St. Michael, with a Proviso, that upon Non-payment within 40 Days of either of the Feasts, the Lease should cease, and be void. In 9 Eliz. the Rent was not paid at Michaelmas, nor within 40 Days after; but afterwards the Queen's Receiver received it, and made an Acquittance as if it had been paid at the Day, and received the Rent afterwards every Year until 30 Eliz. and made Acquittances of it. 30 Eliz. the Queen granted this Land in Fee to Sir T. H. and afterwards an Office found the Non-payment 9 Eliz. upon which Sir T. H. entered. And the Question was, if the Lease was void or not without Office? And all the Barons agreed, that this Lease was void immediately upon the Non-payment, and that the Land is discharged of this Contract of the Term; and the Patentee is no longer Tenant, nor (as Manwood said) a Tenant at Will, nor at Sufferance, but only a Bailiff or Pernor de son tort, and then all the Acceptances after cannot make a void Lease good. And they likewise held, that the first Estate ended as by Limitation; and in such Case no Office is necessary to intitle the Queen, and that therefore the Patentee of the Queen might enter; as into Land of which there was no Lease. Cro. E. 220. Hill. 33 Eliz. in Scacc. S. C. ——— Note, a Writ of Error was brought in the Exchequer Chamber, and Error assigned in the Matter in Law; and after Argument, Mich. 36 & 37 Eliz. the Judgment was affirm'd. Ibid. ——— S. C. Poph. 53. by Name of Finch v. Ristley. — 2 Le 134 to 145. S. C. by Name of Sir Moyle Finch's Case.

There is a Difference betwixt a Lease for Years, reserving Rent payable at the Receipt of the Exchequer, with such Provisoes, and when it is payable to the Receiver or his Deputy; for in the first Case the Payment or Non-payment, appears by Record. And therefore to prove the Non-payment, there needs no Office; but in the last Case the Payment is to be made to the Receiver or his Deputy, and that appears not of Record; and therefore the Lease not void by the Non-payment without Office. Agreed Cro. Car. 100. Mich. 3 Car. Stephens v. Potter.

2. So if the King lease Land for Years, upon Condition that the Lessee shall not do Waste, and after the Lessee does waste, this Matter of Forfeiture was a Matter en Dais, yet the King may grant the Land over before any Office found between Hangate and Sir Thomas Henage, cited M. 32. 33. Eliz. B. R.

S. C. cited by Clerk J. 2 Le 145 in Case of Sir Moyle Finch v. Throgmorton; but

he adds, that some say that the Case was not adjudged but compounded.

3. If a Man be convicted a Papist, yet before the Commission is returned, the King is not sufficiently intitled to the Land or Goods to grant them. Pasch. 2 Ja. B.

4. If the King grants an Office of a Receivership to J. S. and makes an Ordinance in the Letters Patents, that the Receiver should enter into his Account, and finish it before Hillary Term annually, and to pay the last Money of his Debt stated by the Auditor before the 20th Day of March then next ensuing, upon Pain of Forfeiture and Loss of his Office; and after the Receiver is cast in Arrear in his Account before the Auditor, and does not pay the Money before the 20th Day, according to the Ordinance; and this Arrear appears by Record in the Exchequer. By this Nonpayment the Office is forfeited, and the King may grant it over before any Scire facias brought (or Office, as it seems, or other Record of the Forfeiture;) and yet if no Grant be made to another, he ought not to be removed without a Scire

See S. P. cited D 197. b pl. 46. as of Mich. 17 H 8. Toly's Case.

facias brought by the King, because it is an Office of Record; and by Record he ought to be displaced. D. 4 El. 211. 29.

18 H. 6. cap. 6.

Br. Office
devant &c.
pl. 17 cites
28 H. 8 —
Br. N.C. pl.
97. 27 H. 8.

5. If a Man be attainted of Treason, and his Land settled in the actual Possession of the King, either by a special Statute, or by 33 H. 8. cap. the King, notwithstanding the Statute of 18 H. 6. cap. 6. may grant them over before any Office thereof found. D. 3. 4. Ma. 145. 67.

6. If *Villein of the King purchases Goods*, the Property is in the King without Seizure; *contra of Lands*. The Goods may be wasted, and therefore it seems, that Grant of the King of Goods, as here, is good without Office. Br. Patents, pl. 83. cites 35 E. 3.

* See pl. 8.
below.

7. Where the King is *intitled to Land by Ward*, he may grant it over before Office, and before Seisin, and he may seize before Office; Per Gascoign, Thirwit, and Huls, Justices. The Reason seems to be, because the King *has only a Chattle in it*; but see now the Statute * 18 H. 6. 6. that the Patent before Office is void of Land. Br. Patents, pl. 49. cites 10 H. 4. 3.

* A Man purchased Land of the King and Queen, which was Parcel of the Possessions of

the Duke of Suffolk attainted of High Treasons, of which Land purchased no Office was found. And the Question was, Whether the Patent was void by reason of this Statute? And it seemed to several, that the Patent above was good by the Words (if the King's Title &c.) in as much as the Act of Attainder is found in the Chancery and Exchequer of Record. The Reporter adds, Et colligo that the Intendment of this Statute is to reform Grants and Leases to Farm made by the Chancellor, Treasurer, or other Officers of the King of Tenements of Subjects found by Office to be the Title of the King, and seized into the Hands of the King, mesne between the finding of Offices and the Return of them, and not to any Grants or Gifts in Fee simple or Tail &c. D. 145. b. pl. 66. Pasch. 3 & 4 P. & M. Anon.

Rhodes, Pirryam, and Anderson J. held, That this Statute did not extend to the Grant of any Land but those which come to the King by new Title, as Wardship, Mortmain, Attainder, and the like, in which Cases the Mischief was at the Common Law in this, that those who had Right could not traverse the Office, and have the Land in Farm, but were prevented by Grants made before the Office returned by which the King had disabled himself to grant the Land in Farm to him who tendered Traverse, and no Man could tender Traverse before the Office returned. Mo. 209. Pasch. 27 Eliz. Knight's Case.

S.P. Br. Patents, pl. 83.

9. Grant of the King *of the Body of a Ward*, or of Goods, is good without any Office thereof found; *Contra of Land* by the Statute of 18 H. 6. Br Patents, pl. 70. cites 20 E. 4. 11.

The Question in the Exchequer Chamber was, Whether the Almoner should have this Lease or not? And it was held by Brook C. J. of C. B.

10. The King granted to a Bishop *Bona felonum de se* within a certain Precinct. The Bishop was attainted of Treason. A *Lessee for Years of the Bishop within this Precinct before the Indictment* or Attainder became *felo de se*; the King had before this granted to B. his Almoner *omnia bona felonum de se* after the said Treason committed, and before any Indictment; *After this Grant to B. the Bishop is indicted and attainted*. The King shall have this Lease; For the King's Grant to B. before the Attainder of the Bishop was void; For the King granted that which he had not. This is a *remote Possibility* in the King which cannot be granted. Jenk. 210. pl. 44. cites 1 Mar. D. 108.

Brook Ch. Baron of the Exchequer, Portman, Brown, Whiddon Justices, Baron Saxby, and Griffin Attorney General, that the Almoner shall not have the Lease, but it shall be in Order and Distribution of the Exchequer inter Possessiones Archiepiscopatus, because as the Power to grant it was not in the Queen at the time of the Grant, in as much as they were in the Archbishop &c. But Bromley Ch. J. Saunders, Stamford Justices, Baron Brown, James Dyer, and Cordel the Solicitor *e contra*; For the King may grant a Thing which is not in him at the time of the Grant, but which may come afterwards, As the Custody and Marriage of the Heir of his Tenant, Or the Temporalities of a Bishop cum acci-

acciderint. But of Escheat Cum acciderit negatur penitus per Baker, tamen quare inde. The Reporter adds. Nota It had been clear if the Archbishop had been attainted of the Treason at the Time of the Grant, the Grant of the Queen had been good. D. 108. a. pl. 29. the Bishop of Chichester v. Webb.

(I. b) What Things shall pass by *General Words* with *Reference to other Person* or * Thing.

See (K b)—
(Zb)—(A. c)
to (E. c)—
(R c)—
* (L. b)

1. **I**f the King purchases a Manor to which Franchises Real are re-gardant, and after gives the Manor Simul cum Libertat. ad illud spectant. and does not say, Simul cum Libertat. ad illud spectant. at the time that the Manor was in the Hands of the Feoffor of the King, the Franchises do not pass by this General Grant, because the Franchises of common Right were annexed to the Crown. † 43 Aff. 10. per Thorpe. 43 E. 3. 20. h.

† Br. Ex-
tinguishment
pl. 32. S. C.

2. But otherwise it had been if special Mention had been made as * is aforesaid in the Charter. † 43 Aff. 10. 43 E. 3. 20. h.

* For 189.

‡ Br. Extinguishment, pl. 32. cites S. C. For they were extinct before, as it seems, and by these Words they pass as Appendants; per Thorpe.—Br. Incident, pl. 12. cites S. C.

3. **I**f A. be seised of a Manor, to which the Franchises of Waife and Stray, or such like, are appendant, and the King purchases the Manor with the Appurtenances, Now the Franchises are re-united to the Crown, and not appendant to the Manor; yet if he grant the Manor in so large and ample Manner as A. had it, the Franchises will pass as appurtenant to the Manor. Co. Litt. 121. b.

There is a
Difference
between
what was
originally a
Follower of the
Crown, and
other Things
the Crown;
the King. 2

which are not, as *Catalla felenum* &c. If such come again to the King they are merg'd in but it is otherwise in Case of a *Leet, Park, Warren, Toll* &c. which were first created by Mod. 144. Hill. 28 & 29 Car. 2. C. B. in Case of James v. Johnston.

4. **I**f J. S. has certain Liberties appertaining to a Manor, and after the Liberties are resumed, and afterwards the King grants the Manor to J. D. with general Words, that he shall have tot, talia, tanta & eadem Libertates &c. as J. S. had &c. This shall not pass the Liberties which J. S. had before the Resumption. 19. 11 Car. B. R. said by Justice Jones to be so adjudged.

5. If the King grants all Lands, Tenements, and Advowsons of Churches which were the Prior of N's, this is a good Grant. Br. Parents, pl. 87. cites 32 H. 6. 20, 21. per Cur.

So of all the
Lands and
Tenements
which were
J. S's Ibid.

—So if he be possessed of a Ward, and grants all Lands and Tenements, Advowsons and Knights Fees which were J. N's, Father of the Ward. Ibid. —So of all Lands and Tenements &c. which were J. P's. attainted of Felony. Ibid

6. The King, for a great Sum of Money, Bargains and Sells to A. the Manor of Stepney, and the Marsh of Stepney in Fee, and the King moreover grants, that the said Patentee shall have the said Manor and Marsh as amply as it came into the King's Hands by the Grant and Surrender of the Bishop of London, and in Truth the King had not the Marsh by such Grant and Surrender, but only the Manor, and had the Marsh from others. Resolved by all the Judges of England, that the Manor and Marsh pass well by this Patent. The said Reference in the said Patent to the Bishop of London's Surrender is in the King's Covenant, and not in the Body of the Grant; And therefore it does not vitiate the Patent, the first Certainty in the King's Patent is sufficient, where the King is not deceived in his Grant. Jenk. 261. pl. 60. cites Trin. 31 Eliz. Hare's Case.

7. If the King grants over certain Lands which had come to his Hands before, and grants further to the Grantee *tales Libertates Privilegia Jurisdictiones &c.* as he, who was last seized of the Lands had, whereas the King did not know the Certainty of the Liberties and Privileges, yet the Grant is good enough, and the Patentee may inquire what Liberties and Privileges the other had before; and in as much as this Uncertainty may be reduced to a Certainty by Inquiry or other Circumstance the Grant is good. 10 Rep. 65. a. Hill. 10 Jac. in Whistlers Case.—Cites Pl. C. 12. b. in Fogassa's Case.

See (I. b) —
(L. b) —
(Z. b) — (A. c) to (E. c) and (R. c)

(K. b) Grants of the King. [Words of Reference.]

If an Abbot was seized of a Manor which had Waifs and Estrays appendant to it, & Catala felonum & Utlagatorum and the Manor comes to the King's Hands, and he grants

1. **I** If the Abbot of D. had Deodands by Grant of the King in a certain Vill, and after the Abby comes to the King with the Possessions by the Statute of Dissolutions, and the King grants the Land and Vill & Bona & Catalla Felonum by express Words, and after makes a Grant with general Words of tot, talia, eadem & hujusmodi Franchetia, Libertates &c. which the Abbot had in the said Land and Vill. The Patentee shall have, by those general Words, Deodands which shall happen there, in as much as it has Reference to the Liberties which the Abbot had. D. 11 Car. V. R. between the King and the Inhabitants of St. Edmond's Bury in Suffolk. Adjudged in a Quo Warranto and Plea made thereto.

over with a tot, talia &c. there they pass, and the second Grantee shall have Waifs and Estrays as appendant to the Manor, but not Catala Felonum & Utlagatorum, unless he has special Grant of them by Deed. Jo. 349. in Itin. de Waltham.

Bend. 252.
pl. 270. S. C. with the Pleadings, adjudged. —
S. C. cited 10 Rep 65. b. Hill. 10 Jac. in Whistler's Case —
2 Mod. 1. Hill. 26 H 27 Car. 2. the King v. the Bishop of Rochester

2. If the Rectory impropriate of W. to which an Advowson of a Vicarage is appendant, comes to the King by Escheat by Attainder of J. S. and the King ex certa Scientia & mero motu grants to B. in Fee all the Possessions of the Glebe and Tithes of the Rectory by special and particular Names, and generally Omnia Hereditamenta sua quaecunque parcel. spect. vel pertin. dictæ Rectoriæ de W. (But no express Mention is made of the Rectory, or of the Advowson &c.) adeo plene & in tam amplis Modo & Forma Qualitate & Conditione prout dictus J. S. ea habuit & prout ad manus ipsius Regis devenerunt seu devenire debuerunt. In this Case, by this Grant and the said General Words, the Advowson of the Vicarage shall pass, and by the said Words Adeo plene &c. prout &c. & Ex gratia speciali, certa Scientia &c. The Parsonage shall pass also. D. 18. El. 350, 351, 21, 22. Adjudged; For the Queen by Ignorance is not deceived.

3. If the King has a Manor by Escheat or by Purchase, and grants the Manor as entirely as J. N. held it, or as it came to his Hands by Escheat, an Advowson Appendant passes without the other Words; for it shall be intended, that the King is apprized of his Right; per Thorp quod Curia Concessit. Br. Patents. Pl. 6. cites 43 E. 3. 22.

(L. b.)

(L. b.) What Things shall pass by general Words with
Reference to *other Thing*. See (I b.)
(K b.) (Z. b.)
(A. c.) to (E.
c.) & (R. c.)

1. **W**HEN the Charter of the King in general Terms refers to a Certainty, this contains as exprefs Mention as [if] the Certainty had been exprefsed in the Charter, tho' the Certainty to which the Reference is be not of Record, but lies in Averment by Matter en Pais or in Fact. Co. 10. *Whistler*. 64. Resolved.

The Case was this, viz. Queen Elizabeth being seized of a Manor, to which an *ad. appurtenant* was appendant in her Demesne, as of Fee in Right of her Crown, granted the said Manor, with the Appurtenances, for 21 Years, excepting the Advowson; and afterwards reciting the said Demise and Exception, she made another Grant to the same Grantee for another Term of Years, with the like Exception. King James, in Consideration of Service, ex certa Scientia &c. granted the Manor cum suis Juribus &c. to G. H. exceptis que in eisdem literis patentibus exhibentur, and mentions the Lease in Reversion, and the like Exception therein; but then follows this Clause, *Et ulterius de uberiori gratia nostra & ex certa Scientia &c. Damus omnia et singula Tenementa prædicto Manerio quousque modo spectant. &c. Et ulterius Damus &c. to the said G. H. and his Heirs the said Manor Ac cetera omnia & singula Præmissa cum eorum Pertinentiis adeo plene &c. as the same came to him, and now are in his Hands. And it was resolv'd as here. And, 2dly, it was resolv'd, That if those Words (adeo plene et integre) had been omitted, then it would not have passed by the first Clause, but by the Addition of the last Clause, all the Parts of the Patent taking Effect at one and the same Time, the Advowson shall pass appendant. And, 3dly, tho' the first Clause of the Grant refers to the Demise in which the Advowson is excepted yet by the middle Clause all Tenements &c. pertaining to the said Manor are granted; and the last Clause grants the Manor with the Appurtenances &c. adeo plene. 4thly, it was resolv'd, without any Difficulty, that the Exception shall be extended only to the Leases recited, and not to be any Exception out of the Letters Patents of the Fee Simple. And Judgment was given, that the Advowson pass'd. 10 Rep. 63. Hill. 10 Jac. *Whistler's Case*. — S. C. cited 2 Mod. 1. Hill. 26 & 27 Car. 2. C. B. in Case of the King v. the Bishop of Rochester. — S. C. cited 2 Mod. 107. Trin. 28 Car. 2. in Scacc. in Case of the Attorney-General v. Sir Edward Turner. — S. C. cited Hob. 170. Hill. 12 Jac. *Stukely v. Butler*.*

2. The Prior of Christchurch, in the County of Southampton, was seized of the Manor of Christchurch, and of a free Fishing in Gros in the River of Avon in Christchurch; and all this came by the Dissolution of Monasteries in 31 H. 8. to the King; and the King grants the Manor of Christchurch, and the Scite of the said Priory, and all Lands, Tenements, and Hereditaments in Christchurch aforesaid, at any Time appertaining to the said Priory; and all Libertes, Privileges, free Warrens, free Fishings, &c. * belonging to the said Manor. The said Fishery which the Prior had in Gros shall pass by this Grant; for it will pass by the general Words of (All Lands, Tenements, and Hereditaments at any Time belonging to the said Priory) this being an Hereditament belonging to the Priory; and the last Words, in which the free Fishery is expressly granted with a Restriction (appurtenant to the said Manor) will not restrain the first general Words, but the Fishery in gros shall pass by it; for the last Words were only in Majorem Cautelam. Mich. 11 Car. B. R. between Lord Arundel, of Warder, and Alderman Venn, per Curiam. Resolved and Ruled accordingly upon Evidence at the Barr.

* Fol. 186.

3. King Ed. 6 was seized in Fee of the Manor of C. of which a Wood, containing 300 Acres, was parcel; he granted the said Wood in Fee, and after the said Wood reverted to him as Escheat for Treason, afterwards Queen Mary granted the said Wood in Fee, the Grantee re-granted it to Queen Elizabeth; and afterwards Queen Elizabeth granted the Manor & omnes Boscos modo vel antehac cognit. vel reputat. ut pars membrum vel parcell' ejusdem Manerii to the Earl of Leicester in Fee. In this Case, by those Words the Woods shall pass; For the Word Antehac in case of the King may well have Retrospect to the Time of E. 6. but not ultra if the Word Unquam be not adjoin'd to it. But in case of a Subject, the Word (Antehac) without the Word Unquam precedent shall be constru'd quocunque tempore præterito. D. 20. El. 362. And same Case reported with the Reading. Co. Ent.

S. C. cited
6 Rep. 66. b.
Mich. 4 Jac.
C. B. in
Sir Moyle
Pitch's Case.

Ent. 381. adjudged. Et Ibidem 383, 384. the Reasons shewn of the Judgment.

4. If the King grants the Manor of D. with the Appurtenances, and all other Lands, Pastures, Woods, et Hereditamenta, Antehac cognita, usitata, accepta vel Reputata ut Membrum vel parcella Manerum predicti, A Wood which is not parcel of the Manor truly, and in Right, scilicet, in facto et Jure, shall not pass, though it be averred, that the said Wood antea fuit reputat. a parcel Manerum predicti; without saying, that it had been reputed Parcel Time out of Mind. For Matter of Inheritance cannot take any good Foundation without coupling and annexing Time of Prescription. Mich. 21, 22 El. in Scacc. Rot. 302. Adjudged, quod vide in the new Entries 380, where the Reasons of the Judgment are entered upon Record; this was upon a Demurrer between the King and Imber and Wilkin Defendants.

* Orig. [Not-
tram.]

5. And in the said Case if it had been averr'd, that the Wood was reputed Parcel of the Manor Time out of Mind &c. tho' in Case of a common Person Proofs of such Issue might be by vulgar and diffused Reputation of People of the same Vill, or * of our or of other Manor and Manors, or Vills adjoining &c. or of the Body of the County &c. yet in Case of the King in such Issues [as to] the Word (Reput.) the Evidence or Proof shall not be by such vulgar and diffused Reputation of the People; but the Proofs ought to be by some Matter of Record or Writing, as by the express Valuation of it between the Prince and the Subject, in the Particulars of the Purchase, or in the Surveys and Books of Accounts of the Auditors and Receivers, Bailiffs, and such Officers and Ministers always entered and answered in the Rolls and Books as Parcel of the Manor; otherwise, it is not any Proof of the Reputation in case of the King. In the said Case of 21 and 22 El. between the Queen, Plaintiff, and Imber and Wilkin, Defendants. Resolved per Curiam, as it is entered upon the Record in the said New Entries. 380.

See (Z. b.)
pl. 3. S. C.

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6. If there were two Rectories and two Rectors in one Church, and so two several Advowsons, and afterwards they are severally appropriated to one Religious Hospital as several Rectories, and at several Times, and the Rectories of them appropriated 33 E. 3. but always after enjoy'd by the Hospital as one Rectory appropriate; and so reputed to be one Rectory * till the Dissolution of the Hospital, which came to H. 8. by the Statute of 31 H. 8. and afterwards it is granted by Queen Elizabeth by the Name de tota illa Rectoria nostra &c. where in truth they were at the Commencement several Rectories, yet it shall be a good Grant, by reason of the Reputation that it was one Rectory so long Time. Mich. 15 Car. B. R. between Goadbie and Barloe, per Curiam. Resolved upon Evidence upon a Trial at the Bar, which concerned Mr. Staughton, the Patentee, for the Rectory of Moreton, which was Parcel of the Possessions of the Hospital of St. J. hn's in Warwick.

7. King John granted to the Corporation of Waterford *Customam vocatam the Murage de Omnibus rebus Venalibus infra dictam Civitatem emptis seu Venditis adeo Plene et integre sicut Burgenses Villa de Bristol habebant* &c. And it was resolv'd, that by those Words no Custom or Subsidy is granted to them, for this Reason, (among others) That the Reference to the Vill of Bristol is uncertain and void, because there is no such Vill or Borough called Bristol in this Kingdom of Ireland; and the Vill of Bristol intended in the Charter being in England, the Averment that the Burgeses of Bristol had Murage at the Time of this Grant cannot be try'd here. Dav. Rep. 13. a. b. Mich. 5 Jac. B. R. in the Case of Customs.

(M. b.) Grant of the King. *Prerogatives.* [or other See M. b. 2.]
Things. What Things he may grant over.

1. 8 E. 4. Rot. Clauso Memb. 6. Dorso. Verdun habebat omnes Libertates ad Coronam & Regiam Dignitatem pertinentes excepta tamen Crocea, and those by Grant of the King &c.

2. 12 E. 1 Rot. Chartar. Memb. 3. Pro Civibus London, Vicecomitatus de London & Middlesex granted to them by D. 3. and other Liberties, quod faciat Vicecomites &c.

3. The King may appoint another to assent to the Election of an Abbot or a Bishop. 1 E. 1. Rot. Pat. Memb. 15, 16, 6 E. 1. Memb. 14. F. 10. 7 E. 1. Memb. 7.

4. 10 E. 1. Rot. Pat. Memb. 2. Power given to one to assent to the Election of a future Abbot &c.

5. 10 E. 1. Rot. Pat. Memb. 4. Potestas concessa Edmundo Com. Cornub. admittend. Nomine & Vice Regis majorem Oxon, cum ipsum ex parte Communitatum Villæ predictæ sibi presentari contigerit. Consimil. *ibidem*, Pro Majore & Vicecomitibus London.

6. Vide Grant to the Custos Regni of divers Things. 1 E. 2. Rot. Pat. Part 2. Memb. 28.

7. The King cannot grant the next Lapse of the Church of D. which shall happen, before it happens. Hob. R. 208.

The King cannot give a Corody in

a Religious House, or present one to the Church of his Patronage in Reversion, as is agreed in 3 H. 6. 48. For in those and other like Cases, the King has only a Presentment or Commendation of a Person, when the Corody or Church is void. 8 Rep. 55 b. Mich. 6 Jac. in the Earl of Rutland's Case.

8. If a Lapse happens to the King, he cannot grant it over; for it is a Trust in himself. Hob. R. 208.

9. The King cannot grant to another Officium Pincernæ, called the Butler of London, and the Butlage and Prifage of Wine Habend. for 24 Years; for it is not grantable over, it being but Purveyance for Wine for the King's House. B. 40. 41. El. B. R. Sir Thomas Wavisor's Case. Dub. 5. Quere.

10. The King cannot grant over to another the sole Making of Gunpowder for to dig in the Soil of other Men; for it is Purveyance to dig in another's Soil, [and] is a Prerogative not grantable over. B. 10 Ja. B. Sir Robert Johnson's Case; per Curiam. S. P. Resolved 12 Rep. 17. in the Case of Saltpetre.

11. Crim. 2 E. 3. B. R. Rot. The King granted to the Abbot of Reading, inter alia, Nec faciat Milites nisi in Sacra veste Christi 106. in qua parvulos suscipere modeste caveat, maturos autem seu discretos tam Clericos quam Laicos provide suscipiat &c.

12. Rot. Parl. 25 E. 3. 2. Part A. 11. All the Profits of Fines, Prynne's Amercements of the Labourers, Sellers of Victuals against the Statute, granted to the Commons for Ease of the Poor, in Payment of Cents during this Payment. Cott. Rec. Abr. N^o. 11. is, That the King, in

Consideration of the great Dearth of Corn, releaseth the Half of his Provision appointed to be taken by the Purveyors. But N^o. 18 is, that the Fines of Labourers may be paid to the chief Taxes of this Fifteenth, in Aid of the Poor.

13. If A. leases Land, reserving Rent, and after is outlawed, and an Inquisition thereof found, and a Seizure of it made, and the King grants over the * Benefit of the Outlawry quam diu in Manibus suis it shall continue, the Patentee shall have the Rent reserved upon the Lease, which shall become due during the Outlawry, so long as it continues in the Hands of the King. Mich. 10 Car. B. R. between Culpepper and Coveney. Per Curiam. Resolved upon a Special Verdict. Intratur Cr. 7 Car. Rot. 835.

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Br. Prerogative, pl. 104. cites S. C. — 14. The King cannot grant to another the *Navy, Day, and Wast* given him by the Law; for he cannot transfer his Mercy. Jenk. 307. pl. 83. cites 3 E. 3. Fitzh. Corone 310.

S. P. By all the Judges Jenk. 79 pl. 55. cites 1 H. 5. Fitzh. Executors 138. — S. P. Jenk. 374 pl. 77. cites 3 E. 3. Corone Fitzh. 310 Stanf. 50.

Br. Prerogative, pl. 143. cites S. C. — 15. The King shall have all *Tithes* which are in Places that are *out of any Parish*, as in Inglewood Forest &c. and may grant them over by his Letters Patents. Br. Patents, pl. 33. cites 22 Aff. 75. pl. 10. cites S. C. — Br. Prerogative, pl. 47. cites S. C. — Br. Scire facias, pl. 154 cites S. C.

Br. Patents, pl. 41. cites S. C. — 16. Note, that the King by Charter by express Words, may grant to a *Commonalty or Corporation*, to make another *Commonalty or Corporation*. Br. Prerogative, pl. 53. cites 49 Aff. 8.

As if he has an *Annuity* out of the Priory of D. he may grant the Annuity over, and the Grantee shall have Writ of Annuity. Ibid — Br. Prerogative, pl. 11. cites S. C. — So where a Man has *ravis'd the King's Ward*, he may grant over his Action thereof. Br. Patents, pl. 55. cites 5 E. 4. 8. — He may grant over his Action and his Chose in Action. Br. Chose in Action, pl. 6. cites 2 H. 7. 8. — The King may grant Action after that he has Cause of Action; as of Debt, and Things certain, but not of Trespass and Things uncertain. D. 1. b. pl. 7. — S. P. Br. Chose in Action, pl. 11. cites 5 E. 4. 8. — Br. Patents, pl. 55. cites S. C. It was said for Law, that the King may grant a *Chose in Action*, which is *Personal*, As Debt and Damages &c. or a *Chose Mixt*, As the Ward of the Body, but not a *Chose Real*, As Action of Land &c. as Rights, Entries, Actions &c. which Abbots may have, and that the King shall have those by the Statute of Dissolution of Abbeyes 31 H. 8. Those Choses in Action the King cannot grant. But see if there are not Words in this Statute to put the King in Possession, tho' the Abbot was put to his Action. Br. Patents, pl. 98. cites 32 H. 8.

The King may grant a Chose in Action, but not without Special Words. 3 Lev. 135. Mich. 35 Car. 2. C. B. Travel v. Cartaret — S. P. 12 Rep. 2 Ford v. Sheldon.

Br. Contempts, pl. 4. cites S. C. — 18. If the King grants to a Man to have a *Ferry*, and to take of every one a *Halfpenny* &c. this is good; for it is *Quid pro quo*. Br. Patents, pl. 12. cites 13 H. 4. 14.

So of *Pontage* of every one *passing a Halfpenny*, to per Gascoign. 19. And the King by his Patent may grant to a Man to take a *Halfpenny* of every Man for inclosing of his Vill, to have Passage there. Ibid.

Bridge; for they have *quid pro quo*. Ibid. — So of *Toll* for the same Cause. Ibid. — Br. Contempts, pl. 4. cites S. C. — But the King by his Letters Patents cannot grant *Murage* &c. to take such Sum &c. because it is in Charge of his People, which cannot be without Parliament. Ibid.

The King may grant *Toll* to be taken in Fair or Market, but not to take for Passage in the Highway, viz. *Thorough-toll*; for this cannot be taken but by Prescription. Br. Prerogative, pl. 112. cites 50 E. 3. — He may grant *Toll*, Fair, Market &c. but not to have *Affise* of Fresh Force, nor *Toll Traverse*, nor *Toll-Thorough*; for those are by Custom, which cannot commence at this Day by Grant; for the King cannot make a Law by his Grant. Br. Patents, pl. 100. cites 37 H. 8.

It is agreed, that the King cannot grant *Toll* to be taken in the Highway, which is free; but *Pontage* and *Murage* may be granted, because there is *quid pro quo*; but then the Payment thereof shall be no longer made than the Bridge continues for the Use, or the Wall continues for the Defence of the Subject. Noy 176. Darcy v. Allen.

Br. Prerogative, pl. 18. cites S. C. — 20. The King cannot grant his *Prerogative*. Br. Patents, pl. 13. cites 14 H. 4. 9.

Ibid. pl. 60. cites 2 H. 7. 13. S. P. Per Kebill. — Tho' the King grants *Jura Regalia*, yet it shan't exclude the King himself. Per Heath J. Mar. 165. Hill. 17 Car. Anon.

Holt Ch. J. said, He did not know any Reason for a Difference between the ancient Lands of the Inheritance of the Crown, and other Estates which the King has, which are of an *higher Nature*, and called the *Flowers of the Crown*, as Waifs, Strays, &c. as in 9 Rep. The Abbot of Strata Marcella's Case; also *Hundreds* might be alien'd in Fee, till for several Inconveniencies it was restrained by the Statute of E. 3. and the King might erect a *County Palatine*, and separate it from the immediate Government of the King, with a Power to pardon Treasons, Felonies &c. till the Statute of 27 H. 8. cap. 24. which reunites the Liberties and Privileges to the Crown. Skin. 674 Mich. 7 W. 3. in Chm. Sauced. in the Banker's Case.

21. The King cannot *dispose of his Crown by Testament*, tho' it be under ** The King the Great Seal*; Nor of the ** Ports* of the Kingdom; Nor of the *Jewels of* granted to the Abbot of the Crown; Nor of *Power to pardon † Treason or Felony* within this King- Whitney the dom; Nor of *Power to make † Judges, Justices of the Peace, or Sheriffs*; *Custody of a* Nor of such which concern Government in a high Degree; Of these *Part* which is the King can neither make a Grant nor a Testament. He may grant the as it were a *|| Lands* which he has in *Jure Coronæ*, by his *Letters Patents*, or by his Key of the *Writ under the Great Seal*. By all the Judges. Jenk. 79. pl. 55. cites and therefore the Grant was void, and so adjudged; 1 H. 5. Fitzh. Executors 108. Cloathwork-

and such Grants are expressly against 9 E. 3. 1 Godb. 254. Pasch. 12 Jac. in the Case of the E. of Salisbury. — Roll R. 5. in S. C. S. P. — Jenk. 324. pl. 77. —

† A Grant to pardon Treasons is void; But in Scotland and Ireland, such Grant to be executed in the Name of the King is good. And so to make Knights there. The *Distance of Place and sudden Occasions*, and the King's Absence make the Difference. By all the Judges of England. Jenk. 171. pl. 36. cites 1 H. 7. 16.

‡ The King cannot grant to a Man to make an Officer of Record to serve the King's Court, nor to make a Justice; Quere; For Cities and Burghes have such Liberty. Br. Patents, pl. 45. cites 2 H. 7. 6.

The King cannot grant a Power to any to make Justices of Oyer and Terminer; but he ought to constitute such Justices himself; for it is a High Prerogative. Jenk. 171. pl. 36. cites 1 H. 7. 16.

Grant of the King made to the Abbot of St. Alban's to make Justices, is not good; for is a Thing annexed to the Crown, and cannot be sever'd, as Grant to make Deacons, or to pardon Felons is not good, contrary to Steward in Leet, or Justice where Consuance of Plea is; for these are the Stewards or Justices of the King; but the Grant above to the Abbot, to make Justiciarios suos [is not good] and such cannot *grant Mercy to a Felon*, nor the Ordinary is not bound to obey him. Br. Patents, pl. 111. cites 20 H. 7. 6. 8. Fineux Justice.

The King has Power to alien or charge the Estate, which he has in Jure Coronæ. Per Holt Ch. J. Mich. 7. W. 3. Skin. 602. 603. in the Banker's Case.

22. If the King grants to me a *Fair and Toll* in B. this is a good Grant; per Hunt. Br. Patents, pl. 16. cites 19 H. 6. 62.

23. *Præcipe in Capite*, the King cannot grant to devise *Land Testament*; The King cannot grant that Lands shall be Devifitable, Borough-Eng- Nor that the youngest Son shall inherit; nor that Land shall be *Antient Demeſne*, or the like, and yet Prescription and Custom lies of them. Br. Patents, pl. 25. cites 37. H. 6. 27.

liff, Gavelkind, nor the like; for those are by Custom, which cannot commence at this Day by Grant; for the King cannot make a Law by his Grant. Br. Patents, pl. 100. cites 37. H. 8. — S. P. Br. Prerogative pl. 53. cites 49 Aff. 8. — Br. Patents, pl. 41. cites S. C.

24. The King might assign Part of the *Tenths granted to him by the Clergy* to certain of his Creditors, and by this the Clergy became Debtors to them, and the Collectors charged, and the King ousted of it. Br. Grants, pl. 111. cites 1 H. 7. 8.

Br. Chose in Action pl. 7. cites S. C. — Br. Charters de Pardon, pl. 37. cites 7. cites S. C.

25. The King may grant over his *Rent*, and his *Condition to re-enter* S. P. per for Non-payment. Br. Chose in Action, pl. 6. cites 2. H. 7. 8. Haffey Ch. J. Br. Patents, pl. 46. cites 2 H. 7. 7. — S. P. Per Weston. J. Pl. C. 243. in the Case of Wyllion, v. Lord Barkley.

26. The King may be *Founder*, and have no *Corody*, as where the King grants at the *Commencement*, that neither he nor his Heirs shall have the *Corody*, and he may release it after; for the Name of Founder remains. Br. Patents, Pl. 57. cites 8 H. 7. 12.

And so he may release all the Tenure to his Tenant, except Fealty, for there Tenure remains. Ibid. — But he cannot release all the Tenure; for all Land shall be held Mediatly, or Immediately. Ibid.

27. The Queen has Right to certain Land by the *Attainder of J. S.* who was a *Disseisee*. In this Case, if such a *naked Right* may be granted at all, it ought to be granted with special Recital by exprefs and special Words, per Cur. 3 Rep. 4. b. Trin. 35. Eliz. in the Marquis of Winchester's Case, — cites 8 Eliz. *Cromer's Case*, alias *Cromer's Case*.

28. A. obtained a *Licence* from the King to go beyond Sea for a certain Time, and after the Time expired A. is commanded under the Privy Seal, upon his Allegiance, to return to England, and does not obey. It was resolved by all the Judges of England, that if A. in this Case has a Manor where there are Copyholds, the King may grant the Copyholds. Jenk. 246. pl. 35. cites 23 Eliz. D. 275. 177.

29. King H. 6. granted to the Corporation of Dyers within London, Power to search &c. and if they found any Cloth dyed with Logwood, that the Cloth should be forfeit; And it was adjudged, that this Charter concerning the Forfeiture was against the Law of the Land, and 9 H. 3. 29. For no Forfeiture can grow by Letters Patents. 2 Inst. 47.

30. It was resolved, That the King may grant wild Swans unmark'd, and their Cignets, as in Rot. Par. An. 30 E. 3. Part. 2. Num. 20. the King granted to C. W. all wild Cignets unmark'd between Oxford and London for seven Years. And in eodem Rot. An. 16. R. 2. Part. 1. Num. 39. such a Grant of wild Cignets in the County of Cambridge to B. Beresford Knight. And in eodem Rot. An. 1 H. 4. Part. 6. Num. 14. a Grant was made to John Fenn, to survey and keep all wild Cignets unmark'd, *Ita quod de proficuo respondeat ad Scaccarium*, by which it appears, that the King may grant wild Swans unmark'd. 7 Rep. 18. a. Trin. 34. Eliz. in the Case of Swans.

31. If Penalties are given by Acts of Parliament for Relief of the Poor, the King cannot dispose of them otherwise. Jenk. 307. pl. 83. cites Hill. 2 Jac. 7 Co. 36. b.

32. King cannot grant *Reversionem Officii*; For he has no Reversion, but Inheritance grantable in Reversion. 8 Rep. 57. a. Mich. 6 Jac. in the Earl of Rutland's Case.

33. The King may grant a Rent out of a Fair, or a Thing not manurable, as out of a Bailiwick, Tithes &c. Jenk. 14. pl. 24.

34. The King by his Grant cannot exclude himself from prosecuting any Plea of the Crown; for it concerns the publick Government, and cannot be separated from his Person. Jenk. 190. pl. 93.

35. King Ch. 2. being indebted to divers Persons in 41,6000 l. 8 s. 2 d, for the Payment of the Interest of that Sum, grants for him, his Heirs and Successors 25,000 l. per Ann. to be paid out of his Revenue of the Hereditary Excise. And tho' it was objected, That this Revenue was given by Act of Parliament and that it arises out of the Purse of the People, And that they are not alienable, because they come in the Place of an Inheritance, which the King could not have aliened as Tenures in Capite, Purveyance &c. yet adjudged that the Grant was good. Skin. 601. &c. Mich. 7 W. 3. in Cam. Scacc. The Banker's Case.

the Grant was good to charge the Successor. It was admitted, That the King may grant an Annuity, or charge his Revenue, and cited many Books to that Purpose; but it must be said of whose Hands to be received, or else it is not good; for he cannot charge his Person; and that it is good, notwithstanding it is out of an Incorporeal Inheritance. And though it was objected that this is but an Authority, and so void by the King's Death, because revocable; yet they held it an Interest; and a License coupled with an Interest is irrevocable. Upon the Petition of Hornbee, Williamson, Smith, and Stone.

36. Whether the King may grant the Inheritance of a Visitation may be a Question; for it may be said to be privy to his Person; but without doubt he may grant, to whom he pleases, to be Visitor for a Time. Per Holt Ch. J. 12. Mod. 233. Mich. 10 W. 3. Anon.

37. An Appeal lies to the King in Council from a Decree made in the Isle of Man by the Lord Derby, tho' the Grant was made of the Isle of Man without any Reservation of the Subject's Right of Appeal to the Crown; Per Ld Ch. J. Parker; For that otherwise there would be a Failure of Justice; And the Lords of the Council proceeded in the Appeal, and determined in favour of the Appellant, and the Lord Derby submitted and consented to the Examination. Wms. Rep. 329. Mich. 1716. Christian v. Coreen.

(M. b. 2) Grants of the King. What Things he may See (M. b.) grant. *Dispensations, or Forfeitures on Penal Statutes.*

1. **T**HE King cannot grant to any one a Power to dispense with any Penal Statute. Justice and Mercy are inseparably annexed to the Crown and cannot be transferred; By all the Judges of England. Jenk. 307 pl. 83. cites Hill. 2 Jac. 7 Co. 36. b. &c. the Case of Dispensations.

S. P. Hob. 183. Hill. 14 Jac. in Case of Darnley v. Bar-

ber ———
S. P. Hob. 155. Mich. 10 Jac. in Case of Colt and Glover v. the Bishop of Coventry. ——— The King cannot grant to any Subject Power to dispense with as many Offenders as he pleases; By all the Judges of England. Mo. 764. Mich. 3 Jac. Richard's Case.

2. Queen Eliz. under the Great Seal, granted the Penalty and Benefit of a Penal Statute, with Power to dispense with the said Statute, and to make Warrant to the Ld. Chancellor, or Keeper, to make as many Dispensations and to whom he please. Upon a Reference of this Grant, it was resolved by all the Justices of England, that the said Grant was utterly against Law; And also, That when a Statute is made by Parliament *Pro Bono Publico*, the King cannot give the Penalty, Benefit, and Dispensation of such Act to any Subject, nor empower any Subject to dispense with it, or make Warrant to the Great Seal to grant Licences in such a Case; For in such Case the King, who is the Fountain of Justice and Mercy, is trusted with it *Pro Bono Publico*, and this Confidence is inseparably annexed to the Person of the King in so high a Point of Sovereignty, that he cannot transfer it to the Disposition or Power of any private Person, or to any private Use; For it was committed to the King by all his Subjects for the Publick Good. And if he may grant the Penalty of one Act, he may do so in Infinitum; Nor was such Grant known to have been made before; Tho' true it is, that the King, upon Reasons moving him thereto, in respect of Time, Place, or Person &c. may make a Non-Obstante, and dispense with any particular Person that he shall not incur the Penalty of a Statute, and with this the Books agree. 7 Rep. 36. Hill. 2 Jac. The Case of Penal Statutes.

3. The King cannot grant over the Penalties of Penal Statutes; Per all the Justices of England. Mo. 764. Mich. 3 Jac. Richard's Case.

4. 21 Jac. 1. 3. S. 1. *It is enacted, that all Commissions, Grants, Licences, Charters, and Letters Patents, heretofore granted or made to any Person or Persons, Bodies Politick or Corporate, of any Power, Liberty, or Faculty, to dispense with any others, * or to give Licence or Toleration to do, use, or exercise any thing against the Tenure or Purport of any Law or Statute, or to give or make any Warrant for any such Dispensation, Licence, or Toleration to be had, or made, or to agree, or compound with any others for any Penalty or Forfeitures limited by any Estate, or of any Grant or Promise of the Benefit, Profit, or Commodity of any Forfeiture, Penalty, or Sum of Money, that is or shall be due by any Statute before Judgment thereupon had, and all Proclamations, Inhibitions, Restraints, Warrants of Assistance, and all other Matters and Things whatsoever any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same, or any of them, are altogether contrary to the Laws of this Realm, in no wise to be put in Execution.*

It appears by the Preamble of this Act, that all Grants of the Benefit of any Penal Law, or of Power to dispense with the Law, or to compound for the Forfeiture, are contrary to the ancient fundamental Laws of this Realm. It was one

of the Articles whereupon the *Spencers* in the Reign of E. 2. were sentenced, that they procured the King to make many Dispensations, and so by their ill Counsel defeating that which the King had granted by Parliament by good Advice. In 50 E. 3. *Richard Lyons*, a Merchant of London, and the *Lord Latimer* were severally sentenced in Parliament for procuring of Licences and Dispensations to transport Wools &c. 3 Inst. 186. cap. 86.

* The

* The great Inconvenience hereof appeared in the Proceedings of *Empson and Dudley* in the Reign of H. 7. who had the Office of Masters of the Forfeitures, and by Colour of their Commission and Office did most intolerably and unlawfully oppress, burden, and depauperate the Subjects. The like Oppression was used by certain Commissioners for Compositions to be made for Offences committed against Penal Statutes in the Reign of Queen Mary. 3 Inst. 187. cap. 36.

And shall be for ever hereafter examined, heard, tried, and determined by and according to the Common Laws of this Realm, and not otherwise &c.

By this Provision the Judges before whom the Cause depends, and that have

Provided also, that this Act shall not extend to any Warrant or Privy Seal made or directed, or to be made or directed by his Majesty, his Heirs or Successors, to the Justices of the Court of King's Bench, Common Pleas, Barons of the Exchequer &c. and other Justices for the Time being, having Power to hear and determine &c. to compound &c.

Power to hear and determine the same, who are presumed to be indifferent between the King and the Subject may by Warrant or Privy Seal &c. compound &c. for the King only, after Plea pleaded by the Defendant. 3 Inst 187.

5. 1 W. & M. Sess. 2. c. 2. S. 1. *Grants and Promises made of Fines and Forfeitures before any Conviction or Judgment against the Persons upon whom the same were to be levied, are utterly and directly contrary to the known Laws and Statutes and Freedom of this Realm.*

(M. b. 3) Grant. What the King may grant. *Things not in Esse.*

Br. Contempts, 1. pl. 4. cites 11 H. 4. 86. S. C. — Br. Patents, pl. 12. cites S. C.

THE King granted the Office of Measurer of Cloths in London to J. M. and Writ awarded to the Sheriff to put him in Possession, and the Mayor returned that there is no such Office; the King cannot make such Office in Charge of his People by his Grant without Parliament, and the Return awarded good. Br. Return de Briets, pl. 40. cites 12 H. 4.

2. It was agreed, that the King may grant *Fines and Amercements arising in his ordinary Courts* whereof he is inheritable; quod nota; and yet they are not in Esse at the time &c. Br. Patents, pl. 16. cites 19 H. 6. 62.

3. If the King grants to his Tenant that his Heir may enter without suing Livery this is good, and yet it is not in the King at the time &c. Per Yelverton, quod Markham concessit. Br. Patents, pl. 16. cites 19 H. 6. 62.

4. If the King grants to me, that if I alien the Manor of B. which I hold of him that it shall be discharged of the Fine, by this I shall be discharged when I alien; Per Hody. Br. Patents, pl. 16. cites 19 H. 6. 62.

5. The Queen seized of a Rectory appropriate granted *Advowsonem Ecclesiæ &c.* Manwood Ch. Baron held, That the Advowson did not pass, but remained appropriate as before, and that by the Appropriation the Advowson was gone, and not in Esse, and consequently cannot be granted; And this Grant is not helped by the Statute 4 & 5 Mar. of Confirmation of the King's Grants; for that helps only *Misrecitals, Misnaming, or Mistaking &c.* but here is no such Thing in *Rerum Natura* as is pretended to pass by this Grant. 2 Leon. 80. pl. 106. Trin. 26 Eliz. in the Exchequer. The Queen v. Lord Lumley.

Raym. 241. S. C. — 2 Mod. 106. Attorney General and Sir Edward Turner

6. In an Information in the Exchequer, by English Bill, for *Devilish Lands*, the Case was, King James granted certain Marsh-Lands bordering on the Sea to T. S. and Ex uberiori Gratia, he granted all the Soil, Ground, Land, Sand, and Marsh-Land Contigue adjacent Premissis, which are now overflowed and covered with Sea-Water, & quæ ad charred Tempus

in posterum recuperat' forent per Relictionem Maris &c. Non Obstante non nominando valorem, quantitatem vel qualitatem; After this Grant, 100 Acres more became derelict and adjoining to the said Marsh-Lands; and the Question was, Who should have those Lands, the King or the Patentee? It was insisted, That the King should have them, because those Lands were Derelict since the Grant, and therefore should not pass by it; For the King cannot grant that which he had not; and that Lands which he had by his Prerogative will not pass by those general Words in the Grant; but it was answered, That the King may grant what is not actually in him at the time; and that here is as much Certainty as the Thing will admit; for it could not appear how many Acres there would be; but admitting it to be uncertain, it is made good by the Non Obstante, which helps all Defaults for want of Information in the King; but it was held per Cur. (with the Advice of the two Ch. Justices) that the Grant was void as to the 100 Acres, and that nothing passed by those general Words. 2 Lev. 171. Trin. 23 Car. 2. in Seacc. Attorney General v. Sir Edward Farmer.

seems to be S.C.—But neither of them mentions any Opinion of the Court.

(M. b. 4) What the King may grant *during Nonage*.

1. 7 Ed. 6. 3. **C**onfirmes the King's Letters Patents notwithstanding his Nonage or any Statute heretofore made for the Reservation of Tenures, Rents, or Tenths.

2. Leases made by the King of Lands of the Duchy of Lancaster S P. whether the Lands lie out of the Duchy of Lancaster or within; and are not voidable by the Nonage of the King, in as much as they pass from his Person as King, and not as Duke; For per Nomen Regis Nomen Ducis demergitur; by all the Justices of both Benches. D. 209. b. pl. 22. Mich. 3 & 4 Eliz. Anon.

the Law is all one where the Lease is made of the Land of the Duchy, which is not in Lease, to commence immediately, and where it is of a Lease of Land of the Duchy to commence after another Lease before made, the one nor the other is not avoidable by the Non-age of the King; per all the Justices, Serjeants, and Counsel (except Rufwel) Pl C. 221. b. 4 Eliz. the Case of the Duchy of Lancaster.

(M. b. 5) What Things the King may grant, *notwithstanding a former Grant*; and in what Cases such a second Grant shall be a Repeal of the first Grant.

1. **T**HE King granted to W. T. a Ward, so long as it shall happen to be in our Hands from Heir to Heir &c. Afterwards the Heir came to full Age, and died before Livery sued, or Homage done; and after the King granted the Ward of this Heir to H. And the Opinion of the Court was, that the second Grant is good, by Reason that the first did not die in Ward, because he was of full Age, notwithstanding that he did not sue his Livery, nor do Homage; and therefore these Words (from Heir to Heir) are determined. Br. Patents, pl. 68. cites 14 E. 4. 7.

2. The King was Founder of an Abbey, and granted a Corody to a Man who was thereof possess'd; and after the King granted the same Corody to the Abbot and his Successors, and that they shall be quit of him and his Heirs: And some said, that the Grant was not good, because the King had not Corody at the Time of the Grant, As of an Office; for the Grantee is thereof possess'd, and the King has no Reversion in it; for the King

himself cannot have the Corody, nor be Officer; and also Corody is incident to the King as Founder, and he cannot release it any more than a Tenure; and the Justices e contra. But in the Case of the Corody the first Grant was recited; and therefore the King is not deceived, and consequently good; and this *shall enure by Way of Extinguishment*. Br. Patents, pl. 57. cites 8 H. 7. 12.

See (M. b. 4) (M. b. 6) *Leases and Grants of the King, as to the Dutchy of Lancaster, Cornwall &c.*

Br. Feoffments, pl. 51. cites S. C.

S. C. cited 2 Lutw. 1237. in Case of Astill v. Clark.

1. **L**AND of the Dutchy of Lancaster shall pass from the King by Letters Patents only, if it lies in the County Palatine; but if it lies out, then Livery of and Seisin ought to be made of them; for he has them as Duke, and not as King. Br. Prerogative, pl. 72. cites 21 E. 4. 60.

2. Grant of the Reversion of Dutchy Lands without Attornment, under the Dutchy Seal, is a Grant by Record, and passes the Reversion, as a Fine, i. e. to *divest the Estate without Attornment*; but not to make Privy to have Action of Waste, according to Co. 4 Inst. 209. But if the King will make Feoffment of it, Livery ought to be, as in Case of a Subject; for the King may do this by Attorney. 1 Lev. 28. Pasch. 13 Car. 2. B. R. Carpenter v. Marshall.

3. 5 & 6 W. & M. 18. Enacts that Grants made by King Charles 2. &c. of any Parcel of the Dutchy of Cornwall shall be good.

Provided that such Grants be for 31 Years, or determinable upon three Lives, and not dispunishable of Waste; and that the usual Rent be reserved, and if no usual, then a reasonable Rent, not being under the 20th Part of the clear yearly Value.

And that Covenants &c. shall bind Reversioners.

Saving to all Persons their Rights, except the King and his Heirs, and the Duke of Cornwall and his Heirs &c.

And that Tenants compounding for the increased Rent, the old Rent, or other Rent so compounded for, only to stand.

And that the Fees &c. for Grants of small Value shall not exceed such a certain Sum, and imposes a Penalty upon Officers offending.

4. 12 & 13 W. 3. 13. Enacts that all Leases &c. made by King Ch. 2. King Ja. 2. or King William and Queen Mary &c. of any Offices, Lands, &c. in the Dutchy of Cornwall, shall be good in Law &c.

Provided that the Leases be not for more than three Lives, or thirty-one Years.

And that Covenants &c. in such Lease or Grant &c. shall be good and effectual in Law, according to the Words.

Saving to all Persons &c. their Right, except the King and his Heirs, and the Duke of Cornwall and his Heirs.

And that Tenants compounding for taking off any increased Rent &c. on Payment of Composition Money, such increased Rent to cease &c.

And that the King may make any further Grant of Grounds &c. being Part of his Manor of Greenwich, to the Use of Greenwich Hospital.

5. 6 Annæ 25. Enacts that all Leases made of Lands &c. Parcel of the Dutchy of Cornwall, by Copy of Court Roll, or within 7 Years next ensuing, according to Custom of Manors of the said Dutchy, shall be good in Law.

Provided that no Lease be for more than 3 Lives, or 31 Years.

And that all Covenants &c. in Leases &c. shall be good according to the Words.

Saving to all Persons &c. their Right, except the Queen and her Heirs, and the Duke of Cornwall and his Heirs.

And

And on Payment of Composition Money for taking off increased Rent, such increased Rent shall cease.

(M. b. 7) What the King may grant *without Record* or Inrollment.

1. **N**othing shall pass from the King but by Matter of Record; Per the Justices of C. B. Br. Prerogative, pl. 70. cites 14 E. 4. 2. *The King may give several Things without Writing, and yet if it comes in Use in the Law, it is good for nothing; per Brian clearly. Br. Prerogative, pl. 61. cites 4 H. 7. 6. But Shelley J. was precise in the Time of H. 8. that it is a good Gift of Chattels moveable without Writing, as of a Horse &c. Ibid.—S. P. Br. Prerogative, pl. 70. cites 35 H. 8.*

2. If the King grants the Reversion of his Tenant for Life by Patent, this is good without Attornment, by Reason that the Letters Patents of the King are Matter of Record. Br. Prerogative, pl. 95. cites 34 H. 6. 7. 8.

3. 4 & 5 W. & M. 22. No Corporations, Lords of Manors, or others having Grants by Charter or other good Conveyances, who have inrolled and had the same allowed by the Court of King's Bench, shall be compelled to plead the same to any Inquisition, returned by any Coroner. And if any Corporations, Lords of Manors, or others, have or shall have such Grants from the Crown for Felons Goods, Deodands, or other Forfeitures, they shall not be compelled to inrol their whole Charters or Grants, but such Part thereof as may express the Grants of such Felons Goods, Deodands and Forfeitures, and no more; for doing whereof the Clerk of the Crown shall receive 20 s. for his Fee, and no more; and from and after such Inrollment, they shall not be compelled to plead the same to any Inquisition. *This was a Temporary Act, but made perpetual by 7 & 8 W. 3. cap. 36. S. 4.*

4. 10 Anne 18. Reciting, that several Grants have been made by the Crown under the Great Seal, Exchequer Seal, and under the Seals of the Duchy of Lancaster, of Lands in England and Wales, to take Effect in Possession, or by Way of future Interest, for one, two or three Lives, or for some certain Term of Years, not exceeding 50 Years, or for some other Estate and Term, not to exceed 3 Lives, or 50 Years, from the Date of such Grant or Lease, with Covenants importing that the same shall be inrolled before the Auditor of each County within a Time limited, which have not yet been inrolled, so that the said Leases are void or voidable. Enacts that all Persons, having before the 3d of March 1711. omitted to inrol such Leases; shall before the 3d of March 1712. bring them to the proper Auditor to be inrolled; and that in such Case the Lease so inrolled within that Time shall, upon the Inrollment thereof, and Payment of all Rent Arrear, be adjudged to have its Being, as if no Forfeiture for Want of Inrollment only had been incurred.

Provided that this Act shall not continue any Lease which has been adjudged in any Court to be forfeited.

(M. b. 8) Where Grantee of the King shall have like Prerogative as the King should have.

1. **T**H E Grantee of the King of a Ward, or of his Land, of whom another holds by Service of Chivalry, with Fees and Admowson, shall have Prerogative; so that if another Ward falls, who holds of the first Ward, he shall have the last Ward by the Prerogative, tho' he holds of another *Br. Gard. pl. 28. cites S. C.*

another by Priority, who does not hold of the first Ward, by Reason that the King remains Guardian; and Livery shall be sued out of his Hands, notwithstanding this Grant made to the other; quod nota; that he shall have Prerogative. And there the Grantee of the King's Grantee shall have the Prerogative, as it seems; for all is one Reason. Br. Prerogative, pl. 17. cites 12 H. 4. 18. 25.

Br. Patents,
pl. 18. cites
S. C.

2. It was said by Hill J. that the King has Prerogative, that he shall have the Ward of the Body of his Tenant, tho' he holds of him by Posteriority, and yet he cannot grant it to another by Grant of the Seigniority to a Subject: for he shall not have the Prerogative. Br. Prerogative, pl. 18. cites 14 H. 4. 9.

And the
King may
distrain in
all the
Lands of his

3. It was held, that if the King has a Rent-charge in my Land, he may distrain for it in all my Land by his Prerogative; but his Grantee shall not do so. Br. Prerogative, pl. 68. cites 13 E. 4. 5. & 6.

Tenant for his Service, but his Grantee shall not do so; and so see that in such Cases the King's Patentee shall not enjoy the Prerogative of the King, because he is a Subject. Ibid.

4. If the King purchases a Seigniority, of which Land was held by Posteriority, the King shall be in a better Condition than the Subject from whom he claims, and shall have the Priority. And so shall his Grantee also in such Case. 5 Rep. 56. b. Mich. 30 & 31 Eliz. C. B. in Knight's Case, cites 24 E. 3. 65. Fitz. Tit. Gard. 27. 47.

D. 375. b.
pl. 21. — D.
1-6. b. pl. 30.
Marg. cites
it held, that
the King had
only Vestu-
ram terræ,
and could not
grant Copy-
holds. Lady
Basset's Case.

5. If the King licenses A. to go beyond Sea for a certain Time, and after this Time is expired A. is commanded under the Privy Seal, upon his Allegiance, to return to England, and does not obey, his Goods, Chattels, and Lands, shall be seized into the Hands of the King for this Contempt. And it was resolved by all the Judges of England, That if A. in this Case, has a Manor where there are Copyholds and Timber fit to be fell'd each Season, and the King grants it quam diu in Manibus nostris fore contigerit, it is good; and such Patentee may keep Courts in his own Name, and grant Copies, and sell seasonable Timber. Jenk. 246. Pl. 35.

(M. b. 9.) Grantee of the King. In whose Name he may sue; and how.

1. KING granted Annuity, which he had, over, and the Grantee brought an Action in his own Name. D. 1. b. pl. 7. Marg. cites 3 H. 4. 8. 2.

2. If the King's Grantee of a Ward be ousted of the Land, or if the Rents are levied by a Stranger by Tort, the Grantee shall not have Trespass in Contemptu Regis, but shall have a Writ of Ejectione Custodiæ. Br. Ejectione &c. pl. 9. cites 11 H. 4. 64, 65.

3. Where the Grant is of All Issues, Fines, Amerciaments &c. and that the Patentee may levy them by himself or by his Servants; there the Party may collect, and levy it, and the Sheriff of that which is warranted by the Grant, shall have Allowance of it; but where the Grant is of Fines and Amerciaments as above, without the Words, (To levy them by himself or his Servants) there the Sheriff shall levy them, and the Patentee shall sue to the Court for them by Petition; for they lie in Allowance by the Justices, quod fuit concessum; quod nota. Br. Patents. pl. 4. cites 9 H. 6. 27.

* All the E-
ditions are
(Grantee.)

4. The King has a Bond by Outlawry of an Obligee, who grants this over, and also that the Grantee may sue in his own Name; and so he did, and adjudged good. D. 1. b. Pl. 7. Marg. cites 19 H. 6. 47. 2.

5. A

5. A. was *outlaw'd for Treason*. — The King made a *Grant to B.* who brought a *Bill in Chancery* for certain Goods of such a Value *against C.* who had A's Goods in his Possession. 'Twas objected, that their Remedy was at Law by Detinue; but 'twas answer'd, that no Action lay at Common Law 'till Seizure, or finding by Matter of Record; but however, that the King had Election to proceed at Common Law, or in Equity; And the Court held, that Subpœna lay, and ordered C. to make an *Inventory against the next Day*, or that he should be sent to the Fleet. 39 H. 6. 26. b. *Wallwyn v. Smith.*

Br. Confession. pl. 6. cites S. C. — Br. Chose in Action pl. 5. cites S. C. — Of Goods forfeited by Outlawry or Attainder of Treason the Property is

in the King immediately; and the King may grant them over immediately, and the Grantee may have an Action in his own Name. Br. Forfeiture de terres. Pl. 20. cites S. C.

6. If *Bond* be forfeited to the King by reason of *Outlawry*, and the King gives this to a Stranger, yet the Action ought to be sued in the Name of the King, and not in the Name of the Grantee; but if the King * grant *Recognizance* to another, he shall sue this in his own Name, and not in the Name of the King. D. 1. pl. 7. Pasch. 4 H. 8. — The same Difference taken by Read J. Kelw. 169. in the Prior of Sheen's Case.

* Grantee sued in the King's Name The Defendant pleaded the Grant in Bar, but held no Bar; and that notwithstanding the

Grant the King may sue in his own Name, and so may the Patentee; but by Manwood, Assignment of a Bond, perhaps the King cannot sue in his own Name, because 'twas not originally made to him. Savil. 2. Lee v. Brierton.

7. B. was *attainted of Treason*, and having certain Obligations which became forfeited, the King granted them to B's Wife, without any Words enabling her to sue for them in her own Name. She brought Information upon them in her own Name. It was adjudg'd (as the Reporter says he heard) that the Action was well brought, for the King only can grant Choses in Action; and, by the same Reason that he has granted the Obligations, which are the Substance and the Original of the Actions, the Law implies that the Grantee shall use the Means to come at the Thing granted &c. D. 30. b. pl. 208. Hill. 28 H. 8. Breuerton's Case.

Savil 2. seems to be S. C. by the Name of Lee v. Brierton.

8. A *Scire facias* issued out in the Queen's Name to shew Cause why Execution of a Debt which is come to the Queen by Attainder of J. S. should not be had. The Defendant pleaded, that the Queen had granted over this Debt by the Name of a Debt which came to her by the Attainder of J. S. and all Actions and Demands &c. Upon which the Plaintiff demurr'd; and the Question was, If the Plaintiff might sue in the Queen's Name without special Words? And two Precedents were cited, that he may. P. 36 Eliz. Rot. 191. in Scacc. Where Green, to whom a Debt was due, was attainted, and the Queen granted over this Debt, and all Actions and Demands, and a *Scire facias* was sued for him in the Name of the Queen. And another in the 32 Eliz. Rot. 219. Mabb, of London, was indebted by Bond, and the Debt came to the Queen by the Attainder, and she granted it to B. and all Actions and Demands; and a *Scire facias* was issued in the Queen's Name; and the principal Case was adjourned; but the Patentee had express Words to sue in the Queen's Name, tho' it was not pleaded. Ow. 113. Pasch. 36 Eliz. Anen's Case.

Nota, In truth there were special Words in the Patent that he might sue in the Queen's Name; but this was not pleaded, and the Court held clearly, that had it been pleaded, the Suit might be in the Queen's Name, for she had Liberty to grant to sue in her Name.

Cro E. 225. S. C. — So where the Grant was to sue in the Name of the Queen and her Successors, it is a good Warranty; and in a succeeding King's Time, all Process shall be made in the King's Name, as if no Grant had been made thereof. Cro. J. 82. Mich. 3 Jac. in Scacc. The King v. Wendman.

9. A. recovers *Damages in Action Sur Case*, and afterwards is outlaw'd. — The King grants them over. — The Grantee may levy this Debt by Action in his own Name, or by Extent in the King's Name, tho' he has no Words in his Grant to sue it in the King's Name as is usual in such Cases. But an Assignment over of this Debt by the Grantee to another is merely void. Cro. J. 179. Trin. 5 Jac. King v. Twyne.

Savil 132. York v. Allen. S. P.

10. A *Scire facias* is a *Writ of Right*, where the *Patent* is prejudicial to a *Subject*; and the Crown ought to suffer the *Subject* to use their Name. Arg. by Northey, Attorney-General (cites D. 197, 198. 11 Rep. 74. 8 Rep. Prince's Case. Fitzh. tit. Brief 651. 2 Vent. 344. Sir Oliver Butler's Case. 3 Lev. 220.) 10 Mod. 260. in the Case of the Queen v. Aires. — Adjudged Hill. 3 Geo. 1. 10 Mod. 354. B. R. The Case of the Queen v. Aires.

See (T. b) (N. b) Grants of the King. *False Suggestion.*

S. P. And if 1. **I** If the Grant of the King be upon a false Suggestion it is the Suggestion void, because the King is deceived. Co. 11 Earl of Devon. Articles, if 90.
any of the Articles are false the Patent is void. Br. Patents. pl. 48. cites 3 H. 7. 6.

Jenk. 261. 2. As if a Man sues to the King by Petition to have a certain Manor, and says in the Petition, that it is worth but 10 l. per Annum, pl. 60. cites and thereupon the Patent is granted; if it be of the Value of 40 l. 9 H. 6. Legat's Case — the Patent is void. 9 H. 6. 28 b. Co. 10. Arth. Legat. 112.
S. P. If the Difference of the Value be found after by Matter of Record. Br. Patents. pl. 4 cites 9 H. 6. 27. per June. But false Consideration in a Patent will not avoid the Patent; As if the King, in Consideration of 100 l. to him paid &c. grants, where he paid only 60 l. yet the Patent is good. Br. Patents. pl. 4. cites it as so said. 37 H. 8. Br. N. C. 37 H. 8. pl. 310.

Jenk. 304. 3. So if the King has Title and Right to Land, of which A. is pl. 77. cites seised, and after A. is attainted of Treason, by which the King seises, 9 H. 6. — if I sue to the King to have this Manor, which comes to him by 1 Rep. 40. Cause of Treason, and Patent is made accordingly, it is void. 9 b. Alton-wood's Case. D. 6. 28. b. for the false Suggestion.
— 10 Rep. 109. Arthur Legat's Case. — Br. Patents. pl. 4. cites S. C. per June. — Br. N. C. 37 H. 8. pl. 310.

See (Q. b) 4. If a Lessee for 40 Years of a Mill and House lease the House pl. 1. for 20 Years, and then surrenders to the King, and therein recites, that he has all the Estate, Title and Interest, which the first Lessee had, and which is contained in the Patent; and thereupon the King grants a new Lease, by other Patent, to him who surrender'd it; This is void because the Recital is false, inasmuch as he had but the Reversion of Part, and this is the Suggestion of the Party. Ergo. D. 10. Ja. Scacc. between Sawyer and East. Adjudged.

5. In Affize, 'twas found by Verdict, that L. enfeoff'd the Baron and Feme in Fee, and after the Baron was found guilty of Felony, and arraign'd, and he took to his Clergy, and was deliver'd to the Ordinary, for which the Tenements were deliver'd into the Hands of the King. And after the Baron broke the Prison of the Bishop, and the Lord sued in Chancery to have the Land by Escheat out of the Hands of the King, and had it, and a Writ sent to the Escheator; and because the Feme had a joint Estate with the Baron, and the Tenements were deliver'd out of the Hands of the King by false Suggestion, this Suit was adjudg'd Dissisin in the Lord, who enter'd by this Livery, and the Feme recover'd by Award; and because she brought the Affize as a Feme sole, and the Defendant pleaded to it as to a Feme sole, therefore it shall not be argued whether the Baron be alive or dead; and therefore it seems that the King does not make [Claim] but for the Year, Day, and Waste, and then the Entry of the Lord by the Livery obtained by the false Suggestion made the Dissisin, and

and there was no Disfeisin during the Possession of the King. Br. Assise. pl. 114. cites 4 Ass. 4.

6. *Tenant in Tail*, the Reversion to the King purchas'd Licence to Alien in Fee, and to retake Estate to himself and his Heirs in Tail, the Remainder to his Right Heirs. This Licence so purchas'd by false Suggestion is void, and the Alienation is no Discontinuance of the Reversion of the King, where the King is deceiv'd in his Licence. Br. Discontinuance de Possession. pl. 16. cites 40 Ass. 36.

7. If a Man makes Suggestion to the King to have an Office, and obtains it; if the Suggestion be false the Patent is void; because the King is deceived in his Grant. Br. Patents. pl. 26. cites 37 H. 6. 27. per Billinge.

8. *Matter in Fact* express'd in the King's Patent, which is false, shall not prejudice, nor is it material; As if the King reciting in his Patent the good Service which J. S. has done him ultra Mare, or the like, grants to him such Land, where in fact he did no such Service, yet the Grant is good. Per Fitzherbert Justice Quod Mirum. For it appears elsewhere, and in 9 H. 6. 23. that if the King makes a Grant upon false Suggestion, which is only Matter in Fact, the Patent is void; but Brook says, there seems to be Diversity between false Suggestion and false Consideration. Br. Patents. Pl. 1. cites 25 H. 8. 1.

9. Haule had a Dutchy Lease gotten upon untrue Surmises, and the King bestow'd the Land upon the Earl of Devon for his Service done in Ireland. This Lease the Earl sought to avoid by Law; Haule prays to have the Matter examined in Chancery, and to have the Suit stay'd by Injunction; which was denied, for that the Lease was granted by Fraud, and the Fee Simple to the Earl in Possession, and not in Reversion; and nota, that the Lord Chancellor said, That where Lands are granted in Reversion, if the Grantee will avoid the Lease for a Rent paid, but not at the Day; in that Case, he will relieve, but not where the Lease is granted upon a wrong Suggestion, for that were to relieve Fraud in Chancery. Cary's Rep. 45. cites 23 Jan. 1 Jac.

10. King Ph. and Queen M. seized of the Manor of Wimondham in the Right of their Crown, ex speciali gratia &c. granted to G. H. (inter alia) omnes illas duos pccias terre nostras called N. and W. lying in W. now or late in the Tenure of J. C. &c. *Que quidem omnia * a nobis* &c. conclata & detenta &c. and it was found by Verdict, that the Manor was not concealed or detained from the King, but that it was in *Oneris & Computo*, and the Rents and Profits were paid to the King, except only of the said two Parcels of Lands which were not paid to him. It was adjudged, that tho' the Grant was ex certa Scientia, Gratia speciali & mero motu; and notwithstanding the Certainty as to the Thing, the Quantity, the Ville, the County, the Occupation, and the Title; yet it being made upon a false Suggestion of the Party, that the Manor was concealed from the King, when in truth it was not, the Grant was therefore void. 10 Rep. 109 &c. Mich. 10 Jac. C. B. Arthur Legat's Case.

* 2 And. 15.
S. P.

(N. b. 2) False Suggestion. Punishment thereof. Mesne Profits.

1. **T**ENANT of the King in Tail obtained Licence to alien in Fee to two, and retook of them by Fine for Life, the Remainder to E. and J. his Feme, and to the Heirs of E. who was Son of the first Feoffor, who was Tenant of the King. The Feoffor died, and E. his Feme got Livery upon Office found; and after Fine was found in the Treasury, by which it appeared, that the Feoffor had nothing but in Tail at the Time of

the Alienation, which was sent into Chancery, and from thence by Writ; whereupon Scire facias was awarded against Baron and Feme, if they had any Thing to say, why the Land should not be resealed according to the Statute of Lincoln, and to remain in the Hands of the King during the Nonage of [E.] who is within Age, and Heir to the Feoffor; and it was resealed by Award, because the *Licence was void*; for the King was deceived in his Grant, inasmuch as he knew not but that the Feoffor had been seised in Fee, quod nota; and it appears often in the Book of Assises, that Licences obtained upon false Suggestions are void. Br. Alienation. Pl. 28. cites 21 Aff. 15.

Br. Issues
ret. pl. 11.
cites S. C.—
Br. Alienation
pl. 13.
cites S. C.—
Br. Discontin-
uance de
Possession.
pl. 16. cites
S. C.—Jenk.
44. pl. 85.
cites S. C.

2. Suggestion was made in Chancery, that *Tenant in Tail* the *Reversion to the King purchased Licence* of the King to alien in Fee, and to retake to him and his Feme in Tail, the Remainder to his right Heirs; the which was obtained, and the Estate made accordingly; the Baron died, the Feme married K. and after the Feme died, and Scire facias issued upon the Suggestion against K. to say why the King, who now has the Ward of the Heir of the first Baron, should not be restored to the Issues for the Time of the Nonage for the Time which K. occupied; and because this Licence was in Deceit of the King, and his Reversion by this not discontinued, it was awarded, that in Right of two Parts of the Land, he shall be charged for the Time which he occupied, and that of the third Part he shall be discharged, because of this the Feme was Dowable. Br. Patents. pl. 37. cites 40 Aff. 36.

See (P. b.)

* There is a Difference to be observed in all Cases where the King is said to be deceived in his Grant: If the Matter which is false in the Let-

(O. b) In what Cases the King shall be said to be *
deceived in his Grant, [and so the Grant void.]

1. † If the King grants an Office for Life, and after grants it in Reversion to B. which is void, and afterwards recites the Grant to B. as a good Grant, and grants it to commence after it, the King is deceived in this last Grant, and therefore void. Co. 11. Auditor Curle. 4. b.
Letters Patent be suggested on the Part of the Grantee, and that to the Prejudice of the King, there the King shall be said to be deceived in his Grant so as to make it void. Adjudg'd 12 Mod. 78. Trin 7 W. & M. King v. Kemp. — But where the Words of the Letters Patent are Words of the King, altho' the King appears by his Inference to be mistaken even in his Law, yet the King shall not be said to be deceived so as to avoid his Grant. If the King grants an Estate in Possession when he intends only to grant it in Reversion, or where the Thing granted is of a greater Value than it appears in the Grant to be of, these are Suggestions of the Grantee, and the Death of the King in these Cases shall make the Grant void; but if the King be not deceived by any Matter suggested by the Grantee, but is only mistaken in his own Affirmation or Surmises, altho' it be in the Law itself, such Grants are good, and such Construction of them shall be made as tend to their Support; and upon this Difference the Books are plentiful. § H. 7. 3. Dy. 197. b 352. a. 2 Cro. 34. 2 Brownl. 242. 11 Co. Auditor Curle's Case. Mod. Rep 197. So that where he is not so deceived, the Grant shall not be void, if by any Construction it can be made good. Adjudged 12 Mod. 78. Trin 7 W. & M. The King v. Kemp.

† A has Office for Life, the King, reciting the Grant, and that A. is alive, grants the same to E. of R. for Life, without saying, After the Death &c. of A. This Grant is good to commence after the Death &c. of A. 8 Rep. 55. Earl of Rutland's Case. — S. C. cited 12 Mod. 79. in the Case of the King v. Kemp.

The King may grant an Estate in an Office to commence in futuro, or upon a Contingency, which Estate shall arise out of the Inheritance he hath in the Office itself; for such he may have in Point of Interest, tho' not in Execution. Per Curiam. 4 Mod. 280. Patch 6. W. & M. B. R. in the Case of the King v. Kemp.

The King
granted to
J. S. Sciatis
quod de gratia
nostra speciali
Concessit &c.

2. If the King ex gratia speciali grants Licence to B. to alien certain Land in Mortmain, B. may alien the Land in Mortmain by force of this, tho' he holds it of the King in chief, and the King shall not be said to be deceived. 41 Aff. 16. Adjudged.

quantum in nobis est, that he may give a House in E. to the Abbot of F. and the House was held of the King, and no Mention that he may give &c. tho' it be held of him in capite, and to the King, was adjudged.

of his Grant. But Per Knivet. Ch. J. the Grant is good; for the Intent of the King appears. Br. Patents. pl. 38. cites 41 Aff. 19.— So where two Manors are held of the King, the one in Chivalry, the other in Service, and the King grants by Words as above, that he may amortise both, this is good; and yet the one Manor is a greater Loss to the King than the other; and, because it was the Will of the King, that the House should be amortis'd, and the Grant is *de Gratia speciali*, therefore it was awarded that the Grant was good. Ibid.

3. If the King presents A. and upon Refusal brings Quare Impedit, See (Q. b. 2) and, pending this, B. procures Letters Patents to present himself; without mention of the first Presentment and this is obtained by Fraud, and in Deceit of the King, it is a void Presentment, and therefore shall not repeal the first. Dy. 17 El. 339. 47. Adjudged.

Bishop of the Diocese collated L. to it by Lapse, and afterwards the Queen presented one to the Vicarage, who brought a Quare Impedit against the Bishop and his Collatee; pending which Suit, the Collatee by Fraud and Coercement obtained a Presentation from the Queen, without mentioning her Pleasure to revoke the first Presentation. The Queen by Letter certify'd the Court, that she had forgot her former Presentation, and said her Pleasure was that it should stand; Judgment was given for the Queen, because the Fraud and Deceit made to the Queen was confest'd by L's Demurrer, tho' the Notification of it was not under the Great Seal. D. 339. b. pl. 47. Hill. 17 Eliz. The Vicar of Yatton's Case.—But if the King presents one to a Benefice, and before Admission he presents another without Fraud or Coercement in the second Presentation, this is a good Revocation of the first Presentment, without express Clause of Repeal in the Patent, but if the first Presenter is admitted and instituted, then such second Presentation is no Repeal of the former Presentment, without a Recital thereof, and of the Admission and Institution thereupon; and also there ought to be express Clause of Revocation of the said first Presentment, and of the Admission and Institution thereupon, mention'd in the second Letters Patents of Presentment; and this Difference was adjudg'd. D. 235. b. Marg. cites Pasch. 9 Jac. in the Exchequer. Calvert v. Kitchen.

4. If the King presents, and after repeals it, and gives Notice thereof to the Ordinary, and yet the Ordinary afterwards institutes and inducts him; and after the King recites, that where the Incumbent was Canonically Instituted of his Presentment, he confirms it to him for his Life. This is a void Confirmation, because the King is deceived, inasmuch as he was not instituted of his Presentment. D. 12. El. 292. 70. Adjudged. 25 E. 3. 47. Adjudged.

5. So it would be in the said Case if the Ordinary after the Repeal made, and before Notice of it to the Ordinary, had instituted and inducted him; For the Notice is only material to make the Ordinary a Disturber. D. 12 El. 292. 70. 25 E. 3. 47. Adjudged. And no Notice alleged.

6. If a Benefice above the Value of 20l. per Annum, comes to the King by Lapse; and the Chancellor being informed, that it was under the Value of 20l. presents to it under the Great Seal, and the Presence thereupon instituted and inducted, he cannot be afterwards removed; for the Presentment is by the King, being under the Great Seal; and there is not any Difference in Form, when it is for the King, and when for the Chancellor, saving, that for the most Part, the one is Mandantis, and the other is Rogantis, the Confusion of which Words are not of any Moment. Hob. R. 289. Lord Chancellor's Case. * C. 272.

ther this was merely void. [The Book says] It remain'd good 'till it was avoided. Winch. 19. Trin. 19 Jac. Parson and Moslee's Case.— [* The Letter (C) seems to stand for (Case,) but if so it is misprinted, and should be (Case 272.)]

7. But, in the said Case, if the Presentment itself under the Great Seal had recited, That the Benefice had been under the Value of 20l. there the Presentment had been void, because there the King was deceived. Hob. R. 289. C. 272.

8. Where the Bishop of W. had Conscience of Plevins, Fines, and Amerciaments in D. and the King had it Tempore Vacations, and granted them to the Mayor and Burgesses of D. a Scire Facias issued against them to repeal the Patent, because the King was deceived in his Grant. Br. Prerogative, pl. 99. cites 16 E. 3. and Fitzh. Lief 651.

Neither the Queen nor the King's Son are restrained by this Statute concerning Grants by the King. Co. Lit. 123. S. P. Br. Li. ver. pl. 16. cites H. 4. 4. 41.

9. 1 H. 4. 6. *To the Intent that the King might not hereafter be deceived in his Grants, he is content (by the Assents of the Lords Spiritual and Temporal, and at the Request of the Commons) to be hereafter concluded by the wise Men of his Council in Things touching the Estate of him and his Realm, saving always his Liberty.*

In a Petition to the King for Lands, Annuities, Offices &c. their Value shall be therein expressed; otherwise the Letters Patents thereupon had shall be void.

10. The King granted the Land in Ward to one for Life, the Remainder over in Fee, and was deceived in his Grant, and therefore he, at the Suit of the Heir, by Scire facias repealed the Letters Patents, and resumed the Land, and made Livery to the Heir; quod Nota. Br. Patents, pl. 10. cites 7 H. 4. 42, 43.

11. If the King be seized of an Advowson in Fee, and grants it to J. S. Habend. after the Death of W. N. this is a void Grant; Because he is seized in Fee, and has no Reversion therein. Br. Patents, pl. 29. cites 38 H. 6. 34, 35.

12. If the King gives Land to W. N. and to his Heirs Male, the Patent is void, and he is only a Tenant at Will; for the King is deceived in his Grant. Br. Estates, pl. 84. cites 18 H. 8.

S. P. For this founds in Fee Simple, whereas it seems, the King intended only an Estate Tail. which is not so expressed, and therefore now he is only Tenant at Will; but contra in the Case of a Common Person. Br. Patents pl. 104. cites S. C. Lovell's Case.

* As if the King grants his Manor of D. in D. and there is not any such Vill, yet the Grant is aided by the Statute, because the Name of the Manor is certain enough;

13. The Queen by the Words of *Ex certa Scientia, & mero motu*, granted to A. the Manor of D. which she had by Attainder of Sir T. Wyat; whereas in Truth, she was seized by Descent. Dyer thought the Grant void, and Brown and Weston J. agreed, That it was void at Common Law; For in every Case where the King is deceived in himself, or of the Information of the Party, the Patent shall not be allowed contrary to the King's Intent; But in this Case the Patent is supply'd by the Statute of Misrecitals; for when the Substance of the Thing granted appears certainly the * Statute supplies all other Defects. Mo. 45. pl. 137. Mich. 5 Eliz. Anon.

But when the Certainty of the Thing granted does not appear, it is otherwise; as where the King grants an Advowson appendant, where it is in Gross, it does not pass because it is not the same Thing. Ibid. — So if the King grants the Manor of D. in such a County, where there are two Manors of the same Name in the same County Ibid.

* This Reason does not appear in Dier. — Mo. 416. S. C. cited by Coke Attor. Gen. Arg. in Little's Case; and that it was adjudged upon Scire

14. The King was seized of the Manor of Torrington, with a Market held every Week on Saturday, and a Fair in *Vigilio Festi & Crastino Sancti Michaelis*, and incorporated the same, & *ex certa Scientia* granted to them to have a Market every Saturday, and two Fairs every Year, one in *Vigilio Festi & Crastino Sancti Michaelis*, and the other on the Feast of St. George the Martyr. Adjudged, That this Grant was void; For the King was * not apprized of what he granted; For his Intent was *ex speciali gratia, & ex certa Scientia*, to grant a new Fair at Michaelmas; and not to grant that Fair which they had before. Nelf. Abr. 900. pl. 2. cites Dy. 276. the Case of Torrington.

Facias in Chancery, in 19 Eliz. That the Queen having a Fair in Torrington, to be held in the Feast of St. Michael; She incorporated the Town, and without mentioning her Fair, she granted to the Corporation to have a Fair to be held in *Vigilia in Festo & in Crastino* &c. and adjudged the Grant void, by the Assistance of the Judges; Because the Queen is to have the Old Fair, and to the Grant void, and then no Fractions can be to give a Fair to the Corporation in *Vigilia & Crastino* — D. 2. 6. pl. 52. is that the Queen granted to the Corporation a Market every Saturday, and two Fairs in *Vigilia & Crastino Sancti Michaelis, & aliam in Die Sancti Georgii Martyris, & duobus Diebus proxime sequentibus*. But it does not appear in Dy. whether the Grant was adjudged void. — In the Case of Alton Woods. 1 Rep. 50. a. Popham. Ch. J. says he was of Council in this Case, and that it is not fully reported in Dyer. He States it to be adjudged a void Grant; For the old Fair cannot pass, because it was plainly the Queen's Intent to create a new one; for, he adds, there was a Clause in the Grant (*viz. in vigilia & Crastino & Nundine illa essent ad Nocturnum vicinorum Mercatorum & vicinarum Nundinarum*); which Words are always used in the granting a new Fair. But in the Case of a common Person, the old one should have passed without Question; and for that cites Dy. 252. 13 Eliz. — It did not appear to the King that he had an old Fair, but he intended as the Words import to grant a new one, and not the Fair in Effr, and therefore the Grant is void. 2 And 156. cites S. C.

15. King H. 7. being seised of the *two Manors* of Ryton and Condor in Shropshire, he granted *ex certa Scientia &c. totum illud Manerium*, of Ryton and Condor &c. And the Grant was adjudged void; For that the King was deceived in it, yet in the Case of a common Person, it had been good. So where Queen Elizabeth being seised of the Manors of Sapperton and Milborne in Lincolnshire, granted to one *totum illud Manerium de Milborne cum Sapperton*. It was held that neither of them passed. 1 Rep. 46. a. b.— cites 29 Eliz. & 39 Eliz.

16. *Sure facias* by the Queen to repeal a Patent granted to Cotton and his Wife, Anno 35 of her Reign, reciting that H. and G. Conjunction et Divisim, were bound in a Bond of 1000 Marks to the Queen, Anno 31. which was forfeited; reciting also, That the Queen, by Patent, Anno 33 of her Reign, had granted unto Cotton and his Wife, the said Bond, and the 1000 Marks so forfeited; reciting also, That at the Suit of Cotton in the Queen's Name, Judgment was given in the Exchequer, that the Queen should have Execution for the said 1000 Marks. And to the Intent that Cotton might have the said Bond, the Queen by the said Patent Anno 35 in her Reign, reciting the Judgment obtained in the Exchequer, *ex certa Scientia & mero motu &c.* granted him the said Bond, and the 1000 Marks, and all the Benefit and Advantage of the said Judgment. In this Grant the Queen was deceived, and the Grant thereby void. 1. because the Obligation was forfeited at the Time of the Grant: whereas the Queen recited that it was (to become forfeited) 2. Because she recited, That she had granted the Obligation before before by the Patent of 33. whereas in Truth nothing passed by this Patent, for want of true Recital of the Condition of the Obligation. 3. Because the Judgment was given of 12d. Costs and 12 d. Damages, as well as of 1000 Marks; whereas the Grant of *totum Beneficium & Advantagium* of the Judgment aforesaid, extends as well to the Costs and Damages as to the 1000 Marks, which was the principal Debt, and so the Queen deceived, which Lord K. Egerton thought was hard in Conscience, because the Fault was in the Clerk, who wrote the Privy Seal, and the Bill signed was well; But the Law was with the Queen in Extremity. Mo. 448. pl. 610. Pasch. 38. Eliz. The Queen v. Cotton.

17. The Queen was Tenant *pur autre Vie*, and made a Lease for 40 Years; tho' in this Case she cannot absolutely contract for such Lease, yet without any Recital or Mention of Estate for Life, the Lease is good; for the Lease for Years is in Judgment of Law less than an Estate *Pur autre Vie*, and the Queen does no Wrong or Prejudice to any by the Demise, and is not deceived in her Grant; for in Judgment of the Law, this is a Lease for 40 Years if Cesty que Vie lives so long. But if she had granted a greater Estate than she lawfully might, as an Estate Tail, or in Fee, there because she cannot lawfully do it, she was deceived, and by Consequence her Grant void. 7 Rep. 12. Resolv'd. Mich. 33, & 34. Eliz. in the Exchequer. Englefield's Case.

18. The King seised of a Manor in Tail Remainder to his Right Heirs, granted this Manor by Patent to A. in Fee, this Patent is void; for the King intended to grant one entire Estate in Fee, and not by *Fractions*; first for the King's Life, and afterwards to be made void by the Successor, Heir in Tail, and then to be revived again, where the King dies without Issue. By all the Judges. Jenk. 251. pl. 42. cites 41 El. 1 Co. 40. b. Alton Wood's Case. Judge Jenkins says, This is a hard Case. Where the King is not deceived in the Confid-
 eration, nor in the Essence of the Estate, and where the King has no Prejudice, but the possible Prejudice is to the Patentee, the King's Patent ought not to be avoided. The Grant is good in the Case of a Common Person. *Principis beneficium decet esse mansurum*. It is for the King's Honour to maintain his Patents, and it is a Dishonour to him to avoid them by too nice and subtle Constructions; And frequently it is to the grievous Loss of the Patentee. Jenk. 251. pl. 42.

19. If the Queen in her Letters Patents of Presentation mistakes her Title; as if she has Title to present in respect that she is the very Patron, and she presents *Ratione Lapsus*; such Presentation is void; For she is deceived

ceived in her Presentation. 6 Rep. 29. b. Trin. 44 Eliz. B. R. The third Resolution in Green's Case.

20. The King makes a *Lease* for 21 Years to A. and afterwards reciting this Lease, *grants the Reversion* of this Land to B.—A. had surrendered his Lease before the Sealing of the Second Patent. The Second Patent is void; For the King had not the Reversion but the Possession at the Time of the Sealing the Second Patent; But where the King has the *Reversion* of Land, or a Manor, *Expectant upon a Lease for Years*, made by a Common Person, and grants the Land or Manor by Patent by such Words, the Reversion will pass; For the Reversion of the Land or Manor is the Manor or Terra revertens. Jenk. 303. pl. 67.

I.e. Sir
Walter Hun-
gerford's
Case, but not
S. P.—But if
the King
grants 120

21. Note the Difference agreed by the Court. If the King grants to A. all the Waste in D. after an *Ad quod Damnum* returned, and that the Waste contains 120 Acres; yet if it contain 300 Acres, all pass; For the Grant is general, and the *Ad quod Damnum* was to enquire of the Damages, and not for the Quantity of the Waste. Noy. 29. Brand. v. Todd.

Acres of his Waste in D. and the *ad quod Damnum* returns; that it is not to his Damage, and that the Waste contains 300 Acres, there nothing passes, for it is uncertain which 120 Acres were intended, and the Party shall not have any Election against the King; All which was agreed upon Evidence to the Jury. Noy. 29. Brand. v. Todd.

22. The King possessed of a Chattel Interest in Lands, for a Debt grants them in Fee. It was resolved to be void, the King being deceived. 3 Lev. 135. Mich. 35 Car. 2. C. B. Travel. v. Carteret. — cites 1 Rep. 52. a. and the Case of H. 7. there cited; and Mod. 415.

See (O. b.) (P. b) Where the King shall be said to be deceived in his Grant.

1. IF the King seised of the Advowson of a Prebend in Fee which is Presentative, and he grants totam Rectoriā five Præbendam nostram de Itching Abbas in Com. South. cum omnibus Decimis quibuscunque eidem pertin. &c. Monasterio de Winton. nuper spect. in tam amplis Modo & Forma as the late Abbates held it. Tho' the Abbates was seised in Fee of the Advowson, yet the Advowson shall not pass by this Grant, but the King is deceived; For he intended to pass the Rectory and Tithes as a Lay Thing, and not the Advowson. Hill. 14 Car. This Case was referred to the Arbitrement of the Lord Keeper between the Presentee of the Lord Marquis of Winchester and one Pope the Presentee of the King, and he awarded upon hearing of Counsel as a clear Point in Law, that nothing passed by this Grant, and so the Presentee of the King obtained the Church and was instituted and inducted.

See (Y. a 2)
— (M. c)

(Q. b) Grants of the King false Recital. In what Cases a false Recital shall make a Patent void.

8 C. argued.
Lane 74 to
79. and Ibid.
108 to 112.
the Argu-

1. IF Lessee for Years of the King makes an Under-lease of part of the Land to another, and after dies, and his Wife Executrix takes B. to Baron, who surrenders his Term to the King, and after the King reciting the first Demise, and that the Interest thereof is

same

come to B. and that he had surrendered to us, he demises to B. as well in Consideration of 20 l. paid, as *Pro eo quod* the said B. *super se* Assumpsit to repair the Premises at his own Costs. This false Recital shall avoid the Lease; For the King intended the whole Estate of the first Demise to be surrendered to him, and this was the Cause of his Grant. *H. 8. Ja. Scacc. between Sayer and Esjt. Dub.*

2. If the King recites, that where by Letters Patents dated &c. the Office of the Marshal of B. R. was granted to J. S. for his Life, and that the said J. had surrendered them to him, the which he accepted, in Consideration of this Surrender the King grants the Office to J. D. for Life. If the Office was not granted to J. S. or if he did not surrender the Letters Patents, this new Grant made to J. D. is void; Because those are the Considerations of the new Grant. *Mich. 13 Car. B. R. between Sir John Meade and Sir John Lenthall. Resolved per Curiam on Evidence at the Bar in a Trial for the Office of the Marshal of B. R. in an Action upon the Case, and thereupon Sir John Meade was nonsuited.*

3. A Man made Suggestion to the King, that he was seised in Fee, and obtained Licence of the King to alien in Fee, and to retake for Life, the Remainder over in Fee, where it was found that he who got the Licence had not but for Term of Life; by which it was awarded, that the Land upon Scire facias should be re-seised, by reason that the King was deceived in his Grant; *quod nota. Br. Patents, pl. 77. cites 21 Aff. 15.*

4. Queen Mary, in a Grant by her made of the Custody of a Castle to D. recited a Surrender to her made of a former Grant thereof dated *Anno 33 H. 8.* when in Truth it was dated *Anno 32 H. 8.* Afterwards Queen Elizabeth, *Ex speciali gratia*, granted the said Office to K. Adjudged, That by Reason of this Misrecital of the Date, the Grant to D. was void notwithstanding the Act 34 H. 8. and other * Acts of Misrecital. *Nelf. a. 896 pl. 4. cites Kemp v. Mack-Williams. Dyer 195. 1 Rep. in the Case of Alton Woods. S. P.*

ment of the Barons, 3 of whom held the Grant void, but Snig Baron e contra. 1 Rep. 45 a. in Alton Woods Case

ces remain as they were at Common Law, and the Truth of this Case was, That the Custody of the Castle was an Office of Constableship of the same Castle tho' no Word of it was in the Patent; And at length the Plaintiff, viz. K's Servant was nonsuited. *D. 194. b. 195. a. b. pl. 35. Hill. 3 Eliz. Kemp v. Mack-Williams.* — [But I do not observe that any Judgment was given.]

* It was said, that the Statute 4 & 5 P & M. 1. of Misrecital does not aid Offices, but they are excepted, and so Patents of Offi-

5. One who had only a Lease of Lands for 60 Years, made a Lease of the same Lands for 80 Years. The Reversion came to the Crown. The 60 Years expired; The Lessee surrendered to the Queen the Indenture, Estate and Interest, to the Intent he should make a new Lease to him for 20 Years, which he did, and in her Grant she recited the Lease for 80 Years, and that in Consideration of a Surrender thereof, and for divers other good Considerations, she *Ex certa Scientia* &c. demised the same for twenty Years rendering the ancient Rent. It was held by Wray, Southcot, and Manwood, that the Demise was void; Because the Queen was deceived. But Dyer held e contra; Because there is no Suggestion or Information but a Consideration, which tho' it be false is yet nothing to the Purpose. *D. 252. pl. 26. Trin. 18 Eliz. Anon. cites Fitzh. 27 H. 8. and Br. Patents, 37 H. 8.*

6. King H. 8. *Ex certa Scientia*, and in Consideration of 300 l. granted all those Messuages in the Tenure of B. and lying in the Parish of D. when in Truth they did not lie there, but in the Parish of S. It was adjudged, that tho' the Messuages were in the Tenure of B. yet because by the Grant they were restrained to a particular Place where they were not, and there was no other convenient Certainty to fix the Premises, therefore the Grant was void. *2 Rep. 32. b. Mich. 36 & 37 Eliz. Doddington's Case.*

Cro E. 368. Hall v. Combes.

The Case was, H. 8. was Tenant in Tail to him, and the Heirs Male of his Body, and afterwards the Reversion came to the Crown by the Attainder of

the Reversioner, and it was enacted by Parliament, that H. 8. should have the said Manor, and should be adjudged thereof seised to him, his Heirs, and Successors in Fee simple, Saving to all Persons, Except the Reversioner and his Heirs, all Rights &c. It was argued, that tho' the King had the Reversion in Fee at the Time of the Grant, yet the Patent to W. should not *enure first upon the King's Estate for Life, and then to be void against the Issue, and to be good again after the Failure of Issue*; because such Operation of the Grant imports in part Grant of the Reversion which the King had, and so there ought to have been a Recital of the Estate in Possession which there is not, and that the Saving no ways better the Case, but the Grant must be considered as it was at the time of the making, when the King was Tenant in Tail with Reversion expectant in Fee to him. And that *Fractions of Estates cannot be in Grants of the King*, viz. that the Grantee shall have for a Time, and then the King, and then the Grantee again. But afterwards, upon arguing the Case by the Barons in 38 & 39 Eliz. Ewens and Periam Ch. B. were against the Queen [and for the Grantee] in omnibus; and Clarke B. in omnibus with the Queen. Nota, that Periam said, That if Tenant in Tail be, Remainder in Tail, Remainder to the Queen; and Tenant in Tail does Treason, and the Queen makes Lease, and then Tenant in Tail dies without Issue, and afterwards he in Remainder dies without Issue, the Lease shall continue good upon the Reversion. Mo. 413. pl. 570. Mich. 37 & 38 Eliz. Welch's Case.

7. King H. 8. being Tenant in Tail of the Manor of Abboretly, granted it to his Servant Walter Welch, and to Elizabeth his Wife, and to the Heirs of the Body of the said Walter, and in the Patent it was recited, that the King was seised of the said Manor in Fee; and upon Demurrer it was insisted, That this Grant was void, or if not, it was good only during the Life of the King; Because, he having only an Estate-Tail himself, could grant only for his own Life; For he could not grant a greater Estate than he had, so that being Non Informatus, or Mis-informatus of his Estate, he was deceived in granting it. Nell. a. 898. pl. 25. cites Moor 413. Welch's Case.

8. The Prior of W. being seised of the Rectory of L. leased the Tithe-Corn and Hay for Years, reserving 4 l. Rent, and the Lessor to pay 3 s. 4 d. per Annum for bringing the Rent to the Priory; The Priory coming by mesne Descents to the Queen after the Statute of Dissolutions &c. she leased the Rectory, and all the Glebe with the Appurtenances usually let with the same heretofore, under the yearly Rent of 3 l. 16 s. 8 d. to hold the Premises under the said yearly Rent of 3 l. 16 s. 8 d. It was adjudged, That the Lease made by the Queen was void, because she was deceived in the Consideration; For she intended to lease no more than what the Prior had leased before, and to have the same Rent which he had: Now the Prior leased only the Tithe-Corn, and Hay, and had 4 l. per Annum; for the 3 s. 4 d. was not to be deducted out of the Rent, but paid by way of Covenant; whereas the Queen had but 3 l. 16 s. 8 d. for the whole Rectory, so that it is plain she was deceived in the Recital. Yelv. 42. 47. Hill. 1. & Trin. 2 Jac. B. R. Chambers v. Mason.

9. King H. 7. granted the Manor of B. to G. B. in Tail Male, and after by another Patent, reciting the former, and that in Consideration of the Surrender thereof *Virtute cujus* he was seised in Fee, he de Gratia speciali, certa Scientia & Mero Motu re-granted the said Manor to the said G. B. and J. his Wife, and to the Heirs of the said G. B. It was resolved, That the Recital of the Estate Tail, and that the Patentee had surrendered or delivered the said Letters Patents to the Chancellor to be cancelled were both in Judgment of Law the Information and Suggestion of the Party; But the Clause of (*Virtute cujus* he was seised in his Demesne as of Fee) was only the Collection of the King himself as a Consequence upon the Surrender, in which the King mistook the Law. 6 Rep. 55. b. Trin. 4 Jac. Lord Chandois's Case.

10. Also the Party informed the King, That he had delivered his Patents to the Chancellor to be cancelled, whereupon the King affirmed, (*quæ quidem Literæ Patentes adtunc & ibidem cancellatæ fuerunt*) This is not the Information of the Party, but the Affirmation of the King; And the Collection or Affirmation of the King upon the Information of the Party when it is not any Parcel of the Consideration shall not avail his Grant; For all that the Party had informed was true, and the Error was in the

Conse-

Consequence or Interence made by the King upon it; Therefore in as much as the Party had truly informed the King of the Estate Tail, and of the Delivery of the Patent to be cancelled, tho' the King had mistaken the Law or the Matter in Fact, yet this being no Part of the Consideration shall not avoid the Grant; For no Default was in the Party. 6 Rep. 55. b. Trin. 4 Jac. Lord Chando's Case.

11. By Letters Patent the King granted *Omnes illas Pœcias Terræ vocat' B. and C. exist' in Man' de D. nuper in Tenura J. S. Quæ quidem omnia Premissa a nobis &c. Concedata & Detenta fuerunt, & Redditus &c. inde non responsa, Habendum &c.* In Ejectment it was found, that the Manor of D. of which the Premisses in Question were Parcel, Non Conceal' nec Detent' fuit, sed fuit in Onere & Compoto, and that the Rents &c. of the said Manors (except of the Premisses in Question) were answered to the King. It was resolved, That the Grant was void for the false Recital; For the Manor itself being in Charge to the King, the Premisses which are part of it cannot be said to be concealed or detained from the King, tho' in Fact they were in the Possession of an Intruder, who answered nothing for them; Nor can any Land, of which the King is seised, be said in Law to be detained from him. And therefore the Recital of the *Quæ quidem &c.* which is to be considered as the Suggestion of the Patentee, being false, the Grant is void, and cannot be aided by the particular Description or Certainty of the Lands granted, nor by the Words, *Ex Certa Scientia &c.* 10 Rep. 109. Mich. 10 Jac. C. B. Legat's Case.

12. The Queen granted an House and Lands in Fingergoe in Essex to one T. S. who surrendered the same to the Queen, and she made a new Lease of them to him in this Manner: viz. Whereas T. S. hath surrendered his Estate in Fingergoe in Suffex &c. in Consideration thereof I grant to him the House and Lands in Fingergoe in Essex; It was objected, That there was no good Consideration for the new Lease and that the Queen was deceived, for it is in Consideration of his Surrender of his Estate in Fingergoe in Suffex, whereas there is no such Place there but in Essex: Sed per Coke and Doderidge, The Lease is good, for the Statute 43 Eliz. cap. 1. enacts, That Letters Patents shall be good notwithstanding any Misnomer of the Town or County, and this is but a misnaming of the County, and not any material Mistake. 1 Roll. Rep. 23. Patch. 12 Jac. B. R. Godfrey v. Sparrow.

13. By a Deed dated 10 May, Anno 31. the Parsonage of H. was granted by S. to H. 8. and on the 21st July following the King granted the Parsonage of D. to the said S. and his Heirs, in Consideration of the Parsonage of H. to him granted, not saying if granted by Deed or How. Afterwards, viz. on the 26 July the Deed was acknowledged by S. and inrolled Secundum Formam Statuti; Hobart Ch. J. held, that tho' the Consideration expressed in the King's Grant was false, for that the Rectory was not granted to him till the Deed was inrolled, which was after his Grant to S. yet his Grant shall be good; for the King is not deceived at all in Effect; For he has the Parsonage of H. and that by the Grant of S. which was made before the King's Grant, and must be so pleaded as made 10 May. And tho' it be true that it was not compleat for want of Inrolment at the time of the King's Grant, yet when the Inrolment came, it takes its Effect, not from the Inrolment nor by it, but from and by the first Act; And therefore between the Parties it shall bind to all Purposes ab Initio, tho' this be in a collateral Respect. Hob. 221, 222. Needler v. Bishop of Winchester.

14. Queen Elizabeth, Anno 19 of her Reign, granted the Office of Clerk of the Council of the Marches of Wales to A. for Life; and by another Grant Anno 25 of her Reign she granted to the same A. the Office of Secretary there; King James Anno 1, without reciting these former Grants made as aforesaid, granted the same Offices to the same A. for Life; Afterwards
King

King James, *Anno* 9, of his Reign, by another Patent, reciting the Patent of *Anno* 1, granted these Offices to J. S. for Life, when ever they should be void by the Death, Surrender, or Forfeiture of the Queen's Patentee; Afterwards by another Grant, *Anno* 14, reciting both the void Grants made by himself, but omitting the good Grants made by the Queen, he granted the said Offices to W. U. and J. M. for their Lives, after the Death, Forfeiture, or Surrender of A. who was still living, and of J. S. Cum post Mortem, Surrender, Forfeiture &c. of the said A. or J. S. Non Obstante Male recitando &c. and Non Obstante Non recitando aliquod Donum &c. *præante factum de Officiis prædictis*; Adjudged, that the Grants of 1 & 9 Jac. are void; Because the last recited those Grants which were void, and the first omitted those which were good, and that such false Recitals, or false Suggestions shall not be helped by the Non Obstante in the last Grant; Per omnes Justiciarios præter Hide Ch. J. who held clearly the contrary; and Jones J. who seemed to doubt thereof. And the other Justices held further, That these are not properly Misrecitals or false Recitals but false Informations whereby the King was deceived; For by Intendment the King conceived those Grants to be good which were void, and granted those Offices after Determination of those Grants Vel alio quocunque Modo &c. so the King is deceived, and the Non Obstante shall not aid such false Informations and false Suggestions. But there was not any Certificate made of these Judges Opinions, because the Parties compounded. Cro. C. 197. Trin. 6 Car. B. R. Ld. Brook v. Ld. Goring.

In arguing this Case by the Judges, these Diversities were taken in the Construction of Grants.

15. The King granted the *Advowson of the Church of L. lately belonging to the Archbishop of Canterbury*, Whereas the Archbishop of Canterbury never had it. Adjudged that the Church being particularly named, and the King not being deceived either in the Title or Value, the Grant is good enough. Freem. Rep. 178. pl. 190. Mich. 1674. The King v. Sir Francis Clarke and the Bishop of Rochester.

1st. Where there are only general Words, with the Pronoun *Ille*, As *Omnia illa* &c. there all the subsequent Descriptions must be true, or else the Grant will be void as well in the Case of the King as of a common Person. 2dly. Where the Thing is named by a particular Name that doth sufficiently ascertain it, tho' the subsequent Descriptions are false, yet the Grant is good enough in the Case of the King or a common Person; only with this Difference, viz. if it appears either that the King was deceived in his Title, or in the Value of the Thing, or in any Thing relating to his Profit, the Grant is void against the King. Freem. Rep. 178. in S. C. — S. C. adjudged 1 Mod. 195. Hill. 26 & 27 Car. 2. C. B. And in the Argument thereof a Difference was taken, when the King mistakes his Title to the Prejudice of his Tenure or Profit; and when he is mistaken only in some Description of his Grant, which is but supplemental, and not material nor issuable. — S. C. cited by Holt Ch. J. Skin. 663.

16. If the King grants the *Manor of Dale of 5 l. per Ann. Value to A. where it is of the Value of 10 l. per Ann.* the Patent is void for the Value in the same Sentence with the Grant; but if the Value be mentioned in another Sentence, and not in the Grant, the Grant is good. Utile per inutile non Vitiatur. Jenk. 261. pl. 60. cites Cro. J. 34.



(Q. b. 2) Grants of the King. Recital of Leases [and Grants.] In what Cases a Recital is necessary.

Leases of Record ought to be recited where the King grants the Reversion, but not Leases not of Record; for the Subject has not proper Means to come to the Knowledge of them. A Non Obstante in the Patent helps the Non-recital of Leases of Record. Jenk. 263. pl. 77.

1. If the King grants any Land, or &c. which is in Lease for Life, or Years, and does not recite it in the Letters Patents, if the Lease be not of Record, the Grant is good, notwithstanding the Non-recital of the Lease. In Time of H. 8. and E. 6. Br. Patents 93. Co. 6. Lord Skandois 56.

2. As if Land in Lease comes to the King by the Attainder of him who is seised of the Reversion, or by the Dissolution of an Abbey, the Grant of the King of the Land, without Recital of the Lease made by him who was attainted, or of the Abbot, is good; because those Leases are not of Record. In Time of H. 8. E. 6. Br. Patentes 93. Co. 6. *Lord Skandois* 56. in Case of a Reversion expectant upon an Estate Tail created by him who was attainted. D. 6. 7. El. 233. 10. 11. Where the Prior of Wells leased for Life the Demesnes of a Manor, and after the Manor came to the King by the Dissolution of the Priory, and he granted the Manor without Recital of the Lease, and yet good, and the Reversion of the Demesnes shall pass by * Name of the Manor only.

* S. P. For this Word (Manor) includes all Estates and Degrees of Estates of or in the Manor. 6 Rep. 56. a. Trin. 4 Jac. The Lord Chandos Case.

3. If the King grants an Office for Life, he cannot after grant the Reversion of this Office without a special Recital of the Estate for Life; but it is void. Co. 8. *Earl of Rutland* 56. b.

So where a Subject has an Office in Fee, and grants it to

A. for Life, and afterwards grants the Reversion to the King in Fee, if the King grants this Office in Fee to B. without reciting the Grant to A. altho' it is not of Record, the Grant to B. is void; for the Grant of an Office has Reference to the Exercise of it in Presenti, and another had the Possession and Exercise of this Office at the Time of the King's said Grant to B. Jenk. 303. pl. 77.

4. If the King leases Land to another, and after makes a new Lease to the same Party, this is void, without Recital of the first Lease, tho' the Acceptance of this second Lease * operates as a Surrender in an Instant... between *Harris and Wing* adjudged, cited and agreed H. 38. El. B. R. in *Halewell and Ayleworthie's* Case. Vide the Case of *Harris and Wing* argued. D. 32. El. B. R. Mich. 5 Ja. in Scacc. per Curiam.

Gro. E. 231. S. C. Fortho' by the taking the second Lease, the first was drowned, yet at the instant Time of the taking

of the second Lease, it was in Esse, and therefore ought to have been recited, especially being a Lease upon Record; but of a Lease by Matter in Fact, they agreed there need be no Recital. — S. C. cited as adjudged. Mo. 415. in *Weft's* Case. — 3 Le. 242 to 251 Mich. 32 Eliz. S. C. adjudged. — * S. C. cited Cro. C. 198. Contra, that it was held to be no Surrender of the former Lease.

5. If the King presents his Clerk to a Benefice, and after presents another, without Mention of the first Presentation, this second Presentation is good, without any Recital of the first; for the first is revoked in Law by the second Presentment, without Mention of the first. Mich. 8 Ja. Scacc. Hill. 8 Ja. between * *Calvert and Kitchin* adjudged; for the first Presentee had not any Estate nor Interest in the Church nor at Will by the Presentment. Dub. D. 16 El. 327. 4. 17 El. 339. 47. But there adjudged void, because it was obtained perverting a Quare Impedit, in Decret of the King.

See (O. b.) pl. 3 — * S. C. Lane 71. & 105 and Ibid 102. Altham Baron, cited 38 E. 3. 3. 4. by which it appears that a second Presentation

made by the King was good, without a Repeal of the first; and that by Gascoign - H. 4. 32. if the King makes a Presentation to one, and then presents another, without Recital or Repeal of the first, yet the Bishop ought to receive the later Presentee; for it is good without actual Repeal. — † S. P. 6 Rep. 29. b. Trin. 44 Eliz. in *Green's* Case.

6. The King grants a Copyhold by Letters Patents; it need not be recited that it was Copyhold. Per *Newdigate* J. 2 Sid. 139. Hill. 1658. in Case of *Field v. Boothby*.

7. If the King grants an Office to W. N. for Term of Life, and after grants the same Office to a Stranger, the first Patentee dies, yet the second Grant is void; because the first Grant was not rehearsed in the second Patent. Per *Keble*, for Law. Br. Patents, pl. 54. cites 6 H. 7. 14.

8. 6 H. 8. 15. If any make Suit to the King for Lands, Offices, or other Things formerly granted to any Person during the King's Pleasure, the first Patentee being still in Life, the last Grantee shall express, in his Petition or Patent, the former Patent, and the Determination of his Pleasure concerning the same, otherwise the last Grant shall be void.

This Law was made on Petition that the King might not be deceived in his Grant. A.

Arg. 4 Mod. 277. in Case of the King v. Kemp.——If the King grants to me *to be Surveoyer of his Mannors at B. and to take Timber for the Buildings of the King, durante beneplacito*; and the King grants after *the like Grant to another, not making Mention of the first Patent juxta formam Statuti &c.* Yet the last Patent is good; because *no Fee nor Profit is granted* by the first Patent; as if a Man had granted to me that I should carry his Wood, and after grants the like Grant to another &c. Br. Patents, pl. 2. cites 27 H. 8. 28.

King Charles I. by Letters Patents granted to P. *the Office of Under-searcher, Durante beneplacito nostro.* Afterwards Cha. 2. sends his Privy Signet, to confirm the said P. in his Place, and afterwards grants the same Place to F. by Patent, without taking Notice of the Patent to P. The Question was, Whether this second Patent was void by the Statute 6 H. 8. cap. 15. The Lord Chancellor, Windham, and Rainsford inclined that the Patent was determined, and the Scire facias to be quash'd without better Cause shewn. Freem. Rep. 70. Hill. 1672. in Canc. The King v. Folter.

S. P. And if the King Tenant in Tail makes a Lease for Years, or for Life, and dies, the Heir may make another Grant without reciting them; for they are void by the Death of the King Tenant in Tail who granted; and such Grant is no Discontinuance without Warranty; for the King upon his Grant does not make Livery. Br. Patents, pl. 101. cites 38 H. 8. and also 37 H. 8. S. P. between the King and Sir Anthony Lee. or if he will he may accept the Rent reserved, and so affirm the Lease; and when such Successor grants these Lands, he need not recite the void Lease; for tho' it be by Patent of Record, it is null. If the Successor accepts the Rent reserved by the King Tenant in Tail, a Recital of this, or a Non Obstante that it is not recited, is necessary; but where Leases are made by common Persons, and the Reversion comes to the King, the King's Grant of this Reversion, without any Recital or Non Obstante, is good; for the Person who purchases such Reversion from the King, has no Means to know whether there be such Leases or not; for they were made in the Country, and are not of Record. Jenk. 204. pl. 28. cites S. C.

But where his second Grant implies a Grant in Possession, which cannot be by Reason of a former Grant in Possession, the second Grant must recite the first, or is void by the Reason of the Common Law. 1 Rep. 50. in Altonwood's Case.

10. The King in his Grant need not recite his own Estate. Per Periam Ch. B. 1. Rep. 48. a. b. Trin. 42 Eliz. in Altonwood's Case.

See (I. c. 2) (R. b.) What shall be a sufficient Recital of Leases; and What Things will supply the Recital of them.

Br. Patents, pl. 93 says, that this was granted to the Law in Time of H. 8. in Sir Thomas Inglefield's Case; and that it seems to him to be so.

1. If the King recites, that where J. S. holds for his Life of his Grant, he grants the Reversion to J. N. This is good Recital of the Lease, without Mention of the Letters Patents, or Date of them; for the King is not deceived, inasmuch as he takes Notice upon him of the former Interest for Life. 37 H. 6. 37. b. Per Danby. In Time of H. 8. Br. Patentees 96. Sir Thomas Inglefield's Case.

For it is sufficient in Pleading to say that the King, reciting the Lease, has granted to A. B. the Reversion; per Danby Justice, and the Court in a Manner agreed to it: And therefore it seems that if the King misrecites the Date of the first Letters Patents, or the like, yet if he well recites the Estate, and the Thing, and the Name of the Lessee, that then the Grant of the Reversion is good; for where the King takes Notice of his Tenant for Life, and of his Estate, and grants the Reversion, he is not deceived in his Grant; for he takes upon him Notice of the former Interest for Life; and then the Date of the first Patent is not material. Br. Patents, pl. 96. cites 38 H. 6. 37.

2. If the King recites a former Lease for Life made by himself by Letters Patents, bearing Date &c. and mistakes the Date, and then grants the Reversion, yet this will not make the Grant void, inasmuch as the King takes Notice of the State, and the Date is not material. 38 H. 6. 37. b. Per Danby, Time of H. 8. Br. Patentees 96.

3. If the King grants Land, which is in Lease of Record, without Recital of the Lease, but with these Words, Notwithstanding that it be in Lease for Life or Years of Record or otherwise; this is a good Grant, and shall pass the Reversion: for the King is not deceived, and

and diverse Inconveniences will arise by the Recital of the Leases.
Co. 4. *Bosoun*. 35. b. Resolved.

4. So if Land be in Lease of Record, and the King without Recital of the Lease grants the Land, and further grants the Reversion thereof depending, or expectant upon any Estate for Life or for Years; the Grant is good for the Cause aforesaid. Co. 4. *Bosoun*. 35. b. Resolved.

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5. 34 & 35. H. 8. cap. 21. Enacts, That all Letters Patents, and Grants made by the King since the 4th of February, or which shall be hereafter made by him within seven Years next after the making of this Act, shall be good notwithstanding any Mis-naming, Mis-recital, Non-recital, Not finding of Offices, Mis-recital or Non-recital of Leases, Uncertainly Mis-casting, Rating, or setting forth of the yearly Values, or Rate of the Things granted, or of the yearly Rents thereof, Want of Attornment, and Livory of Seisin, or of the naming of the Places where the Things Granted do lie, or of the Tenants or Farmers of them, or any of them.

Provided also, That this Act shall not extend to revive any Letters Patents, or any Office granted by the King, which have been made void by Authority of Parliament, Judgment, Decree, or any otherwise.

This Act shall not be prejudicial to any Letters Patents, Indentures, or Writings made after the 4th of February, in the 27th Year of his Reign, and before the 28th of April, in the 28th Year of the King's Reign, or to any other Statute made for the Corroboracion of such Letters Patents, Indentures, or Writings.

6. 1 E. 6. cap. 8. Such another Statute made for the Confirmation of all Grants made, and to be made by E. 6. from the 28th of January, in the first Year of his Reign, and so during his Life, with such Provisoos and Limitations as in the former Act of 34 & 35 H. 8. are contained. See the Statute.

the King and his Heirs, who after the 22d of H. 8 made a Lease to R. for twenty-one Years; the Reversion descended to E. 6 who leased to P. Habendum, after the Term of the said Sir T. More ended, for 21 Years. Afterwards R. surrendered his Term, and took a new Lease for 30 Years; Adjudged, That P's Lease was void, and not confirmed by any Statute; because the Term made to Sir T. More was ended before P's Lease was made, and then the Lease of the King as to the Commencement has not any Sense and the Statute of Mis-recital and Non-recital extends only when Leases in Esse are mis-recited, or not recited and not when the King intends a Lease to continue, which is ended and determined. And 6. pl. 12. Pasch. 2. Eliz. Holt v. Roper. — Bendl. 84. pl. 129. S. C. and that the said Lease made to Sir T. More was long before extinct, in the Possession of King H. 8. by Unity of Possession of the said Term and Reversion; and so the Lease made by E. 6. cannot commence immediately after the Surrender of the Lease of R. Because the Words of the Commencement of this Lease will not serve it, and thereupon the Parties agreed. The Reporter says he was of Counsel with the Defendant; and that the Opinion of divers of the Justices of C. B. was with the Defendant as above. [But mentions nothing of any Judgment given] — 3 Le 5. pl. 14 S. C. says the Lease to P. was adjudged utterly void, for that the King was deceived in his Grant, and not helped by the Statute of 1 E. 6. cap. 8. — S. C. cited Arg. 4. Mod. 270.

E. 6. filed in Free of the 9th Sheaf of Corn in E. as Parcel of the Possession of the Abbot of L. in the County of York, by Patent under the Great Seal in 7 E. 6. granted to W. R. & W. S. and their Heirs, *et tamquam Modestatemine Garbe Bladum & Granorum vocat. the Ninth Sheaf de &c in E. in Com. Eborac. modo & nuper in Tenura five Occupatione W. W. ac nuper Monasterio L. in Com. Eborum antea spectant.* By this Patent the Plaintiff claimed the Intire 9th Sheaf; for in truth all was in the Tenure of W. W. by a Lease made 26 H. 8. reserving Rent, but E. was in the County of L. and not of York. The Question was, whether the Intire ninth Sheaf passed by reason of the Statute of Mis-recital made 7 E. 6. For as to the Misspon of the County where E. lay, it was agreed on both Sides to be not material, it being helped by the Statute, and so held Popham & Clench J. in the Absence of the other Justices; But Popham said, That the Patent could not convey more than the Moiety, if it could convey that; For the Makers of the Statute intended not to aid a Grant, in which the King was deceived. As if the King grants the Moiety of two Acres, it is not reasonable to construe the Patent to pass 2 Acres; And that is the Difference as to the Quantity where the Certainty is plain; As where the King grants two Acres, and all the Acres; But if he had granted all his Manor of D. containing 100 Acres, it is a good Grant of all the Manor, and all the Acres; But if he had granted all his Manor of D. containing 100 Acres, whereas it contained 20 Acres. Nothing had passed, by Common Law, but it is aided by the Statute. There is also a Difference as to the Quantity and Nature of the Thing; As where H. 8. granted to Sir T. More *Totam Turbariam in Com. Dorset* where a former Patentee, having such a Grant, had before converted Part thereof into *Arable and Pasture* Popham. Sir T. More should have only that which was then Turbary, and the Statute does not rectify such a Grant; For Turbary is a Profit parnable, which may be in one Place and not in another after Conversion; But, had it been a *great Manor*, and after such Conversion the King had granted *Arable and Pasture*, it had been otherwise; For that it is provided for by the Statute. And if he had granted all

The Abbot of W. with Consent of his Covent 21 H. 8. leased Land, of which the Abbot was seized in Fee, to Sir T. More, who was after wards attainted of Treason, and the Lease thereby forfeited, and the King possessed &c, and he being so possessed, the Abby and Reversion came to

His flowers in such a Wood, whereas he had not any flowers in the said Wood, but a Coppie only therein, he was not aided by the Statute; And Judgment accordingly for the Plaintiff, with the Assent of Clench J. Ceteris Justiciariis absentibus. Cro. E. 632. Mich. 40 & 41 Eliz. B. R. Brownlow v. Farr.

Non-Recitals of E-
states fail
are not aided
by this Sta-
tute; But if
Tenant in
Fee Simple was attainted, and the Queen, after the Death of the Party attainted, had granted the Land, no Office being found, this should have been confirmed by this Statute, and the Patent which was void, should have been made good thereby 2 And. 35 Anon.

*The Master
and Fellows
of Magd.
Coll. 15 Eliz.
by Indenture

7. 4 & 5. p. 8 M. 1. *Another like Act made for the Confirmation of all Grants made, and to be made, to or by the Queen, or to the King and Queen, from the first of July in the first of her Reign, and so during her Life with such Provisoos and Limitations as in the said former Acts of H. 8. and H. 6. are contained.*

8. 13 El. 2. *Another like Confirmation of all Grants * made to for and by the Queen, or to be so made within seven Years next after the End of this Session, with like Provisoos and Limitations, as in the former Statutes.*

inrolled, granted to the Queen an House in Fee, rendering 15 s. Rent, upon Condition; That she, before 1 Apr. should convey to B. Spinola, a Denizen, and his Heirs. She granted accordingly. It was resolved, That this Statute of 18 Eliz. cap. . has not given any Vigor or Effect to the said Grant made to the Queen, contrary to the Statute of 13 Eliz. cap. 10. which makes void all such Leases, Gifts, &c. but that after this Act of the 18th. the Grant remains of the same Force as it was before this Act; For it is out of the Letter of this Act which establishes such Conveyances only as are made for Satisfaction of Debts, and Sums of Money, or other good Consideration, which Words in the Preamble are connected to the Body of the Act: For immediately after the same Words the Statute says (for the better Assurance &c. whereof be it enacted) and therefore tho' the Words in the Body of the Act are (for any Debt, Sums of Money, or other Consideration whatsoever) leaving out (good) before the Word (Consideration) And since the said Grant was not for any Debt, Sum, of Money, or other good Consideration it was out of the Letter of the said Act, nor did she ever pay the said Rent; for she granted it over before the Day of Payment, and besides the Want of good Consideration, there was also fraudulent Practice; But admitting there was good Consideration, yet this Statute of the 18th extended not to it; For there are 5 Disabilities whereby Conveyances to the Queen may be impeached. 1st. In respect of the Person of the Grantor, and that by the Common Law, and absolutely, as Infants, Monks, or Secundum quid, and not simpliciter, as Ideot, Non-compos, Feme Covert, unless by Fine and Recovery &c. or by the Statute, as Deans, &c. by 13 Eliz. & Archbishops &c. by 1 Jac. cap. 5. 2dly, By reason of the Nature of the Thing granted; As if Donee in Tail holds of his Donor by Fealty, and the Donor by Deed inrolled, grants the Fealty to the King, it is merely void; because it is an Incident inseparable to the Reversion; So of Grants of Foundership by the Founder. 3dly, In respect of the Estate of the Grantee, as if Tenant in Tail of Land by Deed inroll'd, grants it to the Queen by Deed inrolled in Fee, this will not bind his Issue. 4thly, In respect of the Manner of the Grant, as if one seised in Fee of Land grants it after his Death to the Queen her Heirs and Successors &c. which have no legal Foundation, and are against the Rules of Law. 5thly, In respect of Omission of any Circumstance requisite by Law, but having firm Commencement; As if, in Satisfaction of a Debt, or for Money, or other good Consideration, he Grants to the Queen, her Heirs and Successors, and this Deed never was inroll'd. 11 Rep. 66. b. 76. a. &c. Pasch. 13. Jac. Magd. Coll. Case. — But the Reporter, pag. 77. b. 78. tells the Reader, That there is a Difference between a General Act, viz. (by or from any Person or Persons, Bodies Politick, or Corporate) as the said Act of 18 Eliz. is, and an Act which specifies particular Kinds of Bodies Politick and Corporate; As the Statute of E. 6. cap. 14. of Chuntries, which enacts, That every Gift &c. made to the late King, his Heirs &c. or to the now King, his Heirs &c. by any Archbishop, Bishop &c. of any Manors &c. to the said Archbishop &c. belonging, shall be good and effectual in the Law, to all Intents and Purposes; And the Reporter says, That if Tenant in Tail grants his Land to the Queen, such Grant is good against the Issue by the Statute 18 Eliz. For the Person of the Tenant in Tail is able, and he has Power upon the Land; and that so in Vaughan's Case, Mich. 32. & 33. Eliz. B. R. But if Baron and Feme by Deed grant the Land of the Feme to the Queen, this is not made good by the said Act, to bind the Feme after the Coverture, or her Heirs; For there the Person of the Feme Covert is disabled to convey her Land, unless by Fine upon due Examination, and so also was it held in Vaughan's Case. — There is a Note in Cro. J. 364. Hill. 12. Jac. B. R. where the last above-mentioned Distinction is said by Coke upon the Argument of Warren and Smith's Case, to have been adjudged in 30. Eliz. in Bawd's Case. [But this seems to be meant Vaughan's Case, and only misprinted; But for the better explaining the Difference, observe the Diversity taken by Lord Coke, as above, between the two Statutes of 1. E. 6. cap. 14. and this of 18 Eliz. cap. 2. the above Distinction holding in the one Case, but not in the other.] — This Statute extends only to make good Imperfections in Circumstances and not in Substance, which is the Reason that it makes not good a Lease to the King by an Infant. Arg. Le. 334. pl. 467.

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Provided, That all Patentees, who have since Nov. 18. or shall, during the Space of seven Years, purchase or get of the Queen any Manors &c. which, at the making of Patents, were, or shall be of more yearly Value to the Queen, and so answered in yearly Rent, or Feme, than specified in any such Patent,

or in the Particulars, or Rate thereof, made by any Auditor-Surveyor, or Officer; then every such Patentee &c. their Heirs, Executors &c. within one Year after Office, or other due Proof, Order or Decree thereof, had or made, or to be made within ten Years after the End of the present Session of Parliament &c. shall pay for such Overplus after the Rate of 60 Years Purchase, according to the Value answered at the Time of making such Patents.

6l. 4s. 10d. and of divers other Lands in Wells, of the yearly Value of 19l. and of the Rectory of

of A. of the Value of 10 l. And J. S. intending to purchase of the Queen the said Scite and Demesnes procured a Particular to be made accordingly, and obtained Letters Patents, by which Letters Patents the Queen, without Intention of the Purchaser to have more pass to him than the Scite and Demesnes, gave the said Scite and Demesnes, and the other Lands and Rectory; and so the Patentee had more than was any ways meant or intended. The Question was, If the Patentee should answer according to the Rate of 60 Years Purchase, mentioned in this Statute; For in the Particular, no Rate or Value was made of any of the Lands or Rectory, but only of the Scite and Demesnes, nor was there in the Patent any Value of any Part: Wherefore, since the Statute says, That the 60 Years Purchase shall be paid for the Overplus and Value, which is more than is contained in the Patent, Particular, or Rate; and here is no Value of them in the Particular or Patent, it was held by some that nothing should be paid to the Queen; But the Case considered, it appears, that the Intention was, that she should have Satisfaction for so much as she did not intend to pass according to the annual Value; and the Words are to this Purpose; For tho' there is no Value of the greater Part of the Tenements granted by her, made in the Particular or Patent, yet they were demised for Rent, which was a Rate made by the Officer, and so remains in the or Account of the Auditors; But if the Queen had granted a Wood or other Thing, which never had been rented, it was held by the two Ch. J. and Baron of the Exchequer, That in such Case she had not been aided by the said Statute. And. 110. Pl. 155. Anon.

H. 8. in the 33d Year of his Reign made a Lease for Years to the Earl of B. of the Rectory of Bridgewater, and of the Tithes of two Hamlets in W. parson of the Rectory of W. the Residue of which Rectory was demised by the King at 10 l. a Year Rent, and so continued in Demise till 2 Eliz. when A. purchased of Queen Eliz. the Rectory of W. at the Value of 10 l. a Year, and had general Words of the Tithes of two Hamlets, but no Recital of the Lease of the Earl of B. then in Esse, and thereby she granted the Rectory of B. and the Tithes of two Hamlets, and all contained in the Earl of B's Lease, to the Corporation of Bridgewater. Afterwards Bosleville, the Son of A. after this Statute of 18 Eliz. which had Retrospect to the Beginning of her Reign, claimed the Tithes of the said two Hamlets against the Corporation; Upon this a Bill was preferred in the Court of Wards, and it was agreed by Counsel on both Sides, That the Patent made to A. was void at the first, as to the Tithes of two Hamlets, for Want of Recital of the Lease thereof then in Esse to the Earl of B. and so continued void till the Statute of 18 Eliz. Two Questions were made. 1st, If the Statute of 18 Eliz. will make the Grant good by Relation against the Corporation of B. who had taken New Grant of the Tithes of the two Hamlets in 3 Eliz. because the Statute is, That Patents made since 2. Nov. 1 Eliz. shall be good against the Queen's Majesty, her Heirs and Successors, notwithstanding Non-recital 2dly, If the Deceit in under-valuing the said Tithes of the two Hamlets, which made the Grant void, be remedied by the Statute also by Relation of the Patent made, or of the Statute made; And it was argued, That the Patent, without Recital, is made good against the Queen, her Heirs and Successors, but not against others, and consequently not against the Corporation of B. Afterwards by the Opinion of the two Ch. J. it was agreed against Bosleville. Mo. 131. pl. 2-8 Trin. 25 Eliz. Bosleville v. the Corporation of Bridgewater. --- 2 And. 197. S. C. by Name of Walliswell v. the Corporation of Bridgewater says, The Grant to the Corporation of Bridgewater was for 21 Years, and the Grant to A. was to him and his Heirs, and the Lease to the Corporation was agreed to be good; For the Intention of the Statute was not to make good Grants void, but void ones good, and that the Inheritance shall be in Bosleville, by reason of this Statute, which makes it good against the Queen. And that if there are two Leases made by the King, whereof the first is void &c. and the 2d good, the second remains good and the first void -- Sav. 58. S. C. reported thus, viz. J. S. was possess'd of a Lease for Years of a Manor, of the Demise of the Queen. A. took a new Lease in 2 Eliz. for 21 Years, without reciting the Lease to J. S. for which Reason this second Lease is void. Afterwards Bosleville got a third Lease for 30 Years, with a Recital of the former Interests. It was agreed by all the Justices and Barons assembled at Sergeant's Inn, that by this Statute all Patents are made good against the Queen, her Heirs &c. but not against her Patentees and Assignees; and that to make the Lease to A. to be good, which was void at the Commencement, would be a hard Construction of the Statute.

The Queen made a Lease of Lands to A. and granted the Reversion to J. S. misreciting the Tenant's Name, and afterwards made a third Grant to W. R. with a true Recital of the Tenant's Name; and afterwards this Statute was made; this shall not revive the first [2d] Grant, because it was utterly defeated before the Statute. Cro. E. 808. says, This was cited to be resolved by Advice of the Judges in the Court of Wards, in one Bridgewater's Case; and that all the Justices now affirm'd it to be good Law. Hill. 43 Eliz. C B. in Case of Child v. Low.

A. seized in Fee, was attainted in a Premunire, but before Trial gave his Land in Tail to J. S. Afterwards he was attainted of Premunire, and this was found by Office under the Exchequer Seal. Queen Elizabeth granted these Lands to C. under the Great Seal, within the Time of the Proviso of 18 Eliz. cap. 2. Resolved that the Grant by the Queen was not good at Common Law, because upon the Attainder the Franktenement was not divested, and vested in the King till an Office found thereof, which ought to be an Office of Intitling, and not of Information only of the Particulars of the Lands; and also resolved, That this Grant is not aided by this Act of 18 Eliz. for the Intention of that Statute was to make a Grant good, where the Estate of Franktenement was settled in the King, and not the sum; In such Case this Statute aids the Defect of finding an Office, according to the Statute of 18 H. 6. cap. 6. but not to make a Grant good, where the King has not any Estate before Office found. 20ly. This

Statute makes the Grant good against the King, his Heirs and Successors, and not against a Stranger ; and therefore does not defeat the Estate of the Donee in Tail ; and so upon this Point without Argument, Judgment was given for the Defendant. Jo. 217. Mich 5 Car. B. R. *Grode v. Gayne* — Cro. C. 172. pl. 18. S. C.

9. The Queen demised a Rectory to the Churchwardens of S. for 21 Years, and afterwards by Letters Patents, reciting the first Grant, and that the Church-wardens had surrendered all their Estate for Years, (Modo habentes & ad præsens Possidentes) &c. the in Consideration of the said Surrender, and for a Fine of 20 l. &c. demised the said Rectory to them for 50 Years. It was adjudged, That there need not be any actual Surrender of the first Lease, because the Words in the second Lease, (viz) Modo habentes & ad præsens Possidentes import, that they were then possessed of the first Lease, and their Acceptance of the new Lease for 50 Years was in Judgment of Law a Surrender of the first Lease for 21 Years, and shall precede it, and that a Corporation may make a Surrender of their Term by an Act in Law without Writing, tho' not an express Surrender without Writing. And the Reporter adds, That he had seen several other Letters Patents made on the like Consideration of a Surrender, with the Words (Modo habens & Possidens) in none of which there was ever any actual Surrender made. 10 Rep. 66. b. Trin. 11 Jac. in Scacc. Church-wardens of St. Saviour's Cafe.

(R. b. 2) Recital and Pleadings.

S. C. cited
1 Rep. 43.
a. in Alton-
wood's Cafe.
— S. C.
cited Pl. C.
455 Trin.
15 Eliz. in
Sir Tho.
Wroth's
Cafe.

1. IN the Patent to A. to be quit of Collection of Tenths it was recited, That for as much as the Abbey is the free Chapel of the King, he granted that the Abbot shall be discharged of Collection of Tenths, and therefore he ought to aver the Recital of the King, upon which it is [viz. that it is] (the free Chapel of the King) and because he did not, therefore ill ; but Hufley Ch. J. e contra. And per Cur. the Patent was disallowed because it was ill pleaded, in as much as he pleaded it *quod continetur inter alia*, that such a Thing was &c. and did not aver it in fact ; but it was said per Cur. That at another time he shall have Advantage of the Patent, and so it is not lost for ever. Br. Patents, pl. 71. cites 21 E. 4. 47.

S. C. cited
Pl. C. 455.
in Sir Tho.
Wroth's
Cafe.

2. And where the King recites, That whereas I have done him good Service, and am Decrepit and Lame, therefore he grants to me &c. there I need not to aver the Service nor Residue in the Rehearsal, where the Patent is *Ex certa Scientia & Mero Motu* ; for there the Rehearsal is void, and the Patent good ; Per Hufley Ch. J. Ibid.

3. Otherwise it is where the Surmise comes of the Part of the Party Ibid.

4. As where the King grants a Manor which escheated to him &c. and in truth it is his Inheritance the Patent is void ; For it arises of a false Surmise of the Party himself, but where it comes from the King, and not from the Party the Rehearsal is void and the Grant good, Quod Curia concessit. Ibid.

5. But where the King grants Land, in as much as the Grantee shall release all his Right in such Lands to the King, there he ought to aver that he has released accordingly. Ibid.

S. C. cited
Pl. C. 455.
Trin. 15 E.
15 in Sir
Thomas

6. So where the King for Service performed Grants to a Man Land, this is good, tho' he did no Service ; Per Fairfax Justice, and therefore it seems, that there is a Diversity where the King himself takes Conscience of the

the Surmise or Consideration, and where the King has it by Information Wroth's
and Surmise of the Patentee. Ibid. Case.

(S. b) Grant of the King. *Repealed* by or without Scire facias. In what Cases a Patent may be repealed and made void *without Scire facias*.

1. **I**F the Patentee of the King of an Office commits a Forfeiture by Condition in Fact, or in Law broken, the King may oust him before any Scire facias granted, or Office, or making of any new Patent. Co. 9. Sir G. Reynell. 95. b. Dy, 3 El. 198. 50. and 211. 29. *contra*, Where there is but one Patentee who has committed a Cause of Forfeiture of an Office,

whereof the King has not made any new Patent, there the Patentee shall not be ousted by the King unless by Scire Facias at the King's Suit; Per the Reporter. D. 198. a. pl. 50. who says, He infers it from certain Precedents there cited, and that the Reason seems to be, That he who is placed in an Office by Matter of Record, whereof the King has Notice, ought not to be removed but by Matter of Record viz. by Scire facias and Avoidance of the Letters Patents &c. and cites S. P. between Sir Robert Chester and Ld Hastings.

If the Forfeiture be of an Office for Life, tho' the Conviction be of Record, yet there must be a Scire Facias; Per Holt Ch. J. 12 Mod. 79. But otherwise of an Office at Will. The King v. Kemp.

2. If the King grants Land by his Letters Patents under the Great Seal, and in the lower part, after all the Patent ended, it is put (per Warrantum Commission.) this being done by Warrant of the Commissioners of defective Titles upon Composition with them made, if the Commissioners had not an Authority by their Commission to make any Composition in this Case by force of their Commission, and so this is out of their Commission, those Letters Patents are void in Law without any Scire facias to repeal them, and it is good Pleading [to say] Non conceffit &c. against those Letters Patents. Trin. 12 Car. B. Rot. 344, 345, between *Bestney, Betts, and Orway* for the Vicaridge of Cateras in Com. Cambridge in a Quare Impedit; Resolved per Curiam upon Evidence at the Bar, and the Plaintiff nonsuited upon this Resolution, (But quere how this Averment dehors may be taken against the Letters Patents, the Words Per Warr. Commissl. not being within the Body of the Patent, but after all the Patent ended.) But it seems this Averment may well be, in as much as in the Commission it is appointed, that upon the Warrant of the Commissioners the Patent shall pass under the Great Seal without other Warrant, and in the end of the Patent is put (per Warrant. Commissionar.) Mich. 16 Car. B. R. between *Pitkin &c. and pson. and others*, per Curiam upon Evidence at Bar.

3. Patent of the King shall be reversed in Chancery by Suit there only, by Petition, Traverse, or Monstrans de Droit, and Scire facias thereupon. Br. Jurisdiction, pl. 102. (bis) cites 21 E. 3. 46. Scire Facias to repeal the King's Patent can only be in Chan-

cery. Br. Petition, pl. 11. cites 21 E. 3. 47. — Where the King grants the Land by Patent, and one comes and traverses the Office, he ought to have Scire Facias in Chancery against the Patentee before Issue joined Br. Scire facias, pl. 185. cites 14 E. 4. 1. 6. — Br. Traverse de Office, pl. 59. cites S. C.

4. If the King be seized, be it right or wrong, a Man shall sue to him by Petition; Per Wilby; Quod Nota; and this where the King enters

ters or seises without Office as it seems, but upon false Office a Man may Traverse. Br. Petition, pl. 12. cites 24 E. 3. 55.

5. A Man struck a Juror at Westminster who passed against him, for which he was adjudged to Prison for his Life, and his Hand to be cut off, and his Lands seised into the Hands of the King, and the King, thinking it had been forfeited, granted it to W. N. and afterwards he pardoned all the Offence to the Offender, and all that to him belong'd, by which the Heir sued Scire facias, reciting the Act, the Grant, and the Pardon, to say why the Land should not be re-seised, and Livery made to the Heir; and the Tenant demanded Judgment, because the Scire facias was not founded upon Record, and the Charter is no Warrant of the Judgment &c. Et non allocatur, but Execution was awarded. Br. Scire facias, pl. 160. cites 41 Aff. 25.

Br. Confirmation, pl. 1. cites S. C. —
Br. Procedendo, pl. 12 cites S. C.

6. Quare Impedit brought by the King by reason of the Custody of a Ward because the Grantor of the Ancestor of the Infant of this Advowson had presented; and the Grantee obtained Ratification of the King; and because it was perceived that it should be prejudicial to the King the Ratification was repealed, and Procedendo granted in the Quare Impedit; Quod Nota; Br. Repellance, pl. 1. cites 45 E. 3. 19.

7. Where the King re-seises or resumes Land after Livery made to a Prior Alien &c. without Cause shewn, the Party shall have Petition and Scire facias against him who has the Land; but if it be re-seised or resumed for Cause shewn, he shall have Traverse to the Cause, and Scire Facias against him who has the Land; Per Cur. and so it was done there. Br. Scire Facias, pl. 55. cites 2 H. 4. 10.

Brooke says, the Law seems to be the same upon every Scire Facias to repeal a Patent, if the

8. Traverse was taken to an Office which intitled the King to the Land by Ward which was granted by Patent to A. B. — C. came and traversed the Office, and had Scire Facias against A. B. who was warned, and did not come; and therefore per Cur. his Letters Patents are void. Br. Scire Facias, pl. 131. cites 4 H. 6. 12.

Patentee be warned and makes Default. Ibid.

Br. Livery, pl. 13. cites S. C. —
Br. Re-seiser, pl. 6. cites S. C.

9. Where the King seises for Felony and Leases for Life, and a Stranger has Title, there the King shall resume and make Livery to the Party; for there he has Reversion. And where the King makes Feoffment of Land in Ward, in this Case the Letters Patents shall be repealed, and the Land resumed into the Hands of the King, and Livery made to the Heir; for there the King had not Fee Simple to give. Br. Scire facias, pl. 58. cites 7 H. 4. 20.

Br. Livery, pl. 16. cites S. C.

10. Scire facias was sued to repeal Letters Patents, inasmuch as King E. 3. was possess'd of Land in Ward, and died; and this came to King R. 2. who granted it for Life, the Remainder over in Fee; and the Land was re-seised, and Livery made to the Heir Sine Exitibus, and the Letters Patents revok'd and annull'd; quod nota. Br. Scire facias, pl. 63. cites 7 H. 4. 41.

11. Writ of Error was sued upon an Outlawry of Felony, by which Scire facias was awarded against the Lords Mediate and Immediate, and against the Tertenants who were warned; and one came and alledged Grant by the King for Term of Life, and prayed Aid of the King, and had it; and after Procedendo they were at Issue, if the Party was imprisoned at the Time of the Outlawry pronounced or not, and found for the Outlaw; by which he prayed that the Outlawry be reversed, and the Letters Patents repealed; which was denied him: Whereupon Judgment was given that the Outlawry be reversed, and he restored to the Common Law, and to all that he lost for this Cause; and as to the Letters Patents they would advise; but by this Judgment of Restitution he shall re-have his Land; Per Gascoign and Huls; but Tyrwhite contra, before another Scire facias sued; and he held strongly, that he shall have another Scire facias, and thereupon the Outlaw pleaded Pardon of the King of the Felony; and it was allowed. Br. Scire facias, pl. 76. cites 11 H. 4. 53.

12. If *Traverse of Office* is tender'd, and the Plaintiff takes the Land to Farm according to the Statute, and finds Surety, and after it is awarded that the *Traverse* does not lie, by this the Farm and Surety is discharged, without suing *Scire facias* to repeal the Patent of the Farm. Br. *Scire facias*, pl. 172. cites 4 E. 4. 29.

Br. Patents, pl. 74. cites S.C. for now it appears that the Plaintiff has no Title.

13. Where a Man traverses Office for Land, Office &c. which passes for him, and against the King, there he shall have *Scire facias* against him who has it of Grant of the King of Estate certain, as for Life, or Durante minore ætate, or the like; contra against him who has only the Occupation at Will. Br. *Scire facias*, pl. 173. cites 5 E. 4. 3.

14. Where the King by his Letters Patents dated 1st May grants to me an Office or other Thing, and after by other Patents dated 2d May, he grants the same Thing to a Stranger, those second Patents are merely void; and yet I shall have *Scire facias* against the second Patentee, and avoid those last Patents by Judgment of the Court. Per Cur. Keilw. 196. b. Mich. 9 H. 8.

15. *Scire facias* to repeal the Grant of the Office of Remembrancer of the Exchequer to one Blague, made 18 H. 7. and afterwards in the 3 H. 8. he was made Baron of the Exchequer, Quam diu se bene gesserit in eodem Officio Baronis. Afterwards H. 8. at the Request of Blague, granted the said Office of Remembrancer to Blague's Son for Life, To Have after the Surrender or Demise, seu aliquo Modo quocunque & quandocunque vacare contigerit. And because Blague had no legal Estate after his being made Baron, upon *Scire facias* returned, and Default made Judgment was given to revoke the last Patents &c. D. 197. b. 198. pl. 47. cites Hill. 15 H. 8. Blague's Case.

16. *Scire facias* issued to repeal a Grant of the Office of Bailiff of the Hundred of C. which P. the Plaintiff had by Inheritance in Fee Simple, and was expelled &c. by Colour of Letters Patents. Upon the *Scire facias* return'd, and Nil Dicit, the Patent was revoked, and P. restored to the Office Una cum Exitibus, with a Salvo Jure cujullibet. D. 198. a. pl. 49. cites Hill. 28 H. 8. Penwarren's Case.

17. The Lord Ch. J. Brooke granted to G. the Office of Prothonotary of C. B. and afterwards revoked it without a *Scire facias*, because he was incapable to execute that Office, and granted it to another; and thereupon a Precedent was shewed, 5 Ed. 4. where the Office of the Clerk of the Crown was granted to one Vyntner, and Croxon who died; and then Vynter exhibited his Patent, and prayed Admittance; but the Court would not admit him to the Office, because he was unexperienced in it; and his Disability being signified to the King, Ore tenus, without a *Scire facias*, he commanded them to swear and admit another. Dyer 150. b. pl. 1. Mich. 4 & 5 Ph. & M. Vynter's Case.

2 And 118. S. C.

18. Sir Maurice Berkly having the Office of Banner-bearership in the Field, surrender'd the same before a Master in Chancery out of Court, but did not deliver up his Letters Patents to be cancelled; this Surrender was accepted and recorded by the said Master; and thereupon the Office was granted to Sir John Sullyard. Afterwards Sir Maurice Berkley brought a *Scire facias* to repeal the Grant to Sullyard. And the Question was, Whether the said Record was sufficient to make a Surrender, or not. But the Matter was compounded by the Lord Keeper, Ex Assensu Partium; and Sir J. S. was removed, and Sir Maurice was restored Sine Exitibus vel Feodis medio tempore receptis. D. 176. pl. 29. Hill. 2 Eliz. Sir Maurice Barkley v. Sir John Sullyard.

19. The Tenant of the Plaintiff conveyed the Land to the King, and the King conveyed to a Corporation; so as in Rigour of Law the Seigniority of the Plaintiff was extinguished; but the King was deceived in his Grant; for he was made an Instrument to do Wrong, to deprive the Plaintiff of his Seigniority, and therefore the King's Grant was void. Upon the whole Matter, forasmuch as the Plaintiff's Tenant can't have the Land, because he has conveyed it to the King, and the King can't have the Land, because of the Wrong it would do to the Plaintiff as to his

Seignior, therefore the said Letters Patents shall be repealed. If the Plaintiff's Tenant had conveyed the Land to the King by Deed in-roll'd, or had been attainted of Treason, and the King had granted it to a common Person to hold of the King; now the Seignior of the Lord in this Case had been extinguished; but the King upon Petition ought to repeal this Patent, and grant it so that the Seignior of A. shall revive. Jenk. 22. pl. 40.

20. Upon a Scire facias against Richard Earl of Dorset, and others, Members of Sackvill-College in East Grinstead in Suffex, to shew Cause *why the Patent of Incorporation should not be repealed*, so far as it concerns Edward Earl of Dorset, and the Heirs Males of Robert Earl of Dorset the Founder; the Writ recited the Will of Robert, who devised to his Executors &c. that they should Found and Endow the said Hospital, and make By-Laws, and that the Heirs of the Founder should have the Patronage and Visitation thereof. It recited also, that the King intending to incorporate the said Hospital according to the said Will constituted the Corporation, and granted Licence to purchase the Endowment intended; and also that Edward Earl of Dorset, who was Heir Male of the Founder, should have the Patronage and Visitation; reciting further, that the Lady Thanet and the Lady Compton are Heirs of the Founder, and that Edward Earl of Dorset had taken upon him the Patronage and Visitation; to the Disinheriton of those Ladies: Upon this Scire facias Richard Earl of Dorset demurr'd. As to the Question between the Heirs General of the Founder, and the Heirs Male, Twisden J. held, that the Letters Patents to Edward Earl of Dorset and his Heirs Male are void, and ought to be repealed, and may be repealed, tho' they are void; and cited Hill. 12 H. 7. Keilw. 19. a. per Keble. And that they are void appears, 1st. Because they are contrary to the King's Intention, as Hob. 223. Anne Needler's Case; 10 Rep. 110. b. Vow's Case. 2dly. The King cannot deprive the Patron of those Rights which are appendant to him, which are Jus Patronagii and Jus Visitandi, which are in Earl Robert and his Heirs; but the Lord Ch. Baron Hale gave several Reasons why he could not give Opinion to repeal this Patent without great Cause. He held, That such Scire facias lies not in Point of Form. 1st. A Patent may be repealed in Part; but this shall be only in Clauses independent. Fitzh. Petition 19. 2dly. There will be an infinite Inconvenience, if by this Way Part of this Patent may be repealed; for by this Way a good Patent may be made nought; & e contra. 3dly. The King had said How he will have this Corporation qualified, and he is dead, and now he will make other Patrons after his Death. 4thly. The King hath said How it shall be governed, and Not Otherwise. And here is no Necessity to repeal this; because if there be void Clauses they may be tried in Assise, and therefore the Writ is ill. 2dly. It doth not lie for the Matter. 1st. Because the King takes Notice of the Clauses in the Will, which was desired to be repealed; and therefore he is not deceived in this Grant. In the Creation of the Hospital, Sunt tres Actores fabulæ, 1. Earl Robert. 2. The King, whose Right is to grant the Incorporation. 3. The Executors, which ought to endow this Hospital. 2dly. The Executors are not at any Prejudice, because they are not compellable to indow this Corporation, if it be not according to the Will of Earl Robert. 3dly. If the Executors have indow'd the Hospital, being so created, it is a Breach of Trust. There is no Patronage till the Foundation of the Hospital, and the Heir of Robert hath not to do with it till the Foundation; and the Executors do not break the Trust. The Lord Keeper would advise; and so it was adjourned. Raym. 154. Trin. 18 Car. 2. B. R. and 177. Pasch. 21 Car. 2. B. R. The Case of Sackvill-College.

21. In Error of a Judgment in Scire facias in the Petty-Bag, which set forth, That the City of Rochester was an ancient City, and incorporated Time out of Mind till 1 Ed. 4. who incorporated them by a new

Name

Name of &c. That before and after that Time they had a Market there, held every Wednesday and Friday, and Toll &c. And that the King by Letters Patents, 7th of March last past, reciting an Inquisition upon an *Ad quod damnum*, by which it was found, *That it would not be to the Damage of the King, or of any other Person, if the King should grant to the Defendant a Market in Chatham, to be held there every Tuesday,* whereupon he granted to the Defendant a Market, to be held there every Tuesday, Cum omnibus Profitibus &c. prout per literas patentes apparet; And that Whereas Chatham is within a Mile and a Half of Rochester; And Whereas Datum est Nobis intelligi by the Mayor &c. of Rochester, that *the Writ of Ad quod damnum was executed on the Day it bears Date at 30 Miles distant from Rochester, and without Notice given to the Mayor &c. Surreptitiose & Fraudulenter;* and that the Grant is Ad damnum of the City of Rochester, and of the Market there; and by Reason thereof the Grant is void; Therefore the Sheriff of Kent is commanded to warn the Defendant &c. to shew Cause why the Letters Patents should not be cancell'd. The Defendant demurr'd, and the Attorney-General joined in Demurrer. And the Lord Chancellor Finch, assisted by North Ch. J. and Jones J. gave Judgment, that the Letters Patents should be cancell'd and vacated: Whereupon the Defendant brought a Writ of Error in the House of Lords; and there it was objected, That this Scire facias doth not lie to repeal Letters Patents, because there is another Remedy at Common Law, by Attise of Nuisance, or Quod Permittat, where the Matter may be tried by a Jury. But the Judgment was affirm'd; and it was resolved that the King hath a Right to repeal a Patent by Scire facias, in which he was deceived, or the Subject prejudiced. 3 Lev. 220. Trin. 1 Jac. 2. in the House of Lords, The King v. Butler.

22. A Grant was made by the Crown, for the setting aside whereof an *English Bill* was brought, and it was argued, that it was the proper Remedy in this Case; for that no Scire facias would lie, it not being a Record of this Court; and if it would, yet it would not reach the Fraud objected, it not appearing within the Body of the Grant; and that in this Case Equity did but follow the Law, and that it was not fitting it should be left in the Power of the King's Officers, by their Connivance in passing Grants, to put the King without Relief in a Case of *Fraud and Surprise*; and tho' there was *no Precedent of such Suit*, yet all Precedents had a Beginning, and that, in this Case, was sufficient Ground for a Decree, there being all the *Badges of Fraud and Surprise imaginable*, &c. In the passing the Grant there was *no Warrant to the Auditor to make out the Particulars; nor to the Surveyor, to return an Estimate; nor Bill with a Ducquet, sign'd by the Attorney; nor any of the usual Methods observed, but only a Warrant under the Sign Manual for passing the Grant in Question to the Chancellor, and countersign'd by him;* which is making a Warrant to himself, a Thing never before heard of. And tho' a Patent may pass by immediate Warrant under the Privy Seal or Signet, yet this is in Effect no Warrant, being only under the Sign Manual, and no Seal, either Privy or Signet, to it. That this Matter was dispatched with great Hurry, the Warrant being sign'd the 29th, and the Patent passed the Dutchy Seal the 31st of the same Month, tho' it would take a Week's Time to ingross it; and that here the *Petition Proposal, the Chancellor's Report, and Warrant for the Grant, are all of the Writing of the Grantee's Servant;* And that the *over-value was excessive*. And for those Reasons the Patent was set aside by the Chancellor, assisted by Jones, Ch. J. and Montague, Ch. B. See Vern. 277 to 282. Mich. 1684. And 370, 382, to 392. Hill. 1635. Attorney-General v. Vernon, Brown and Boheme.

(T. b.) What shall be good Cause to repeal a Patent upon a Scire facias.

The Earl of Kent sued Petition to the King, for that **I** F the King grants a Patent by Fraud or false Suggestion, by which he is deceived, he may avoid it upon a Scire facias **Ture Regis. 21 E. 3. 47. Co. 11. Mag. College. 74. b.**

gave to his Father 60l. Rent out of the Vill of C. in Tail, his Father died, he within Age, and the King joyed by H and the Plaintiff, who is yet within Age, and the King by his Letters Patents gave to the Lord J. M. in Fee; and because the King is bound to render to the Heir as fully as it came to him, he pray'd that the Patent be repealed, and the Rent reſeised; upon which the Petition was indors'd, that the Archbishop of Canterbury and certain others, calling to them the Chancellor, should do that which is fair according to Law and Reason; upon which Scire facias was issued to warn J. M. to appear in the Chancery, to say why the Patent granted by false Suggestion should not be repeal'd, and the Rent reſeised; which Suggestion was, that the Land came to the King by the Attainder of R. F. Whereupon J. M. came and said, that so far as this Suit is to defeat Frank Tenement, and to restore it to another, that this shall be at the Common Law, et non Allocatur, because it is to repeal Patent of the King, which cannot be but only in Chancery. Br. Petition. pl. 11. cites S. C. — Br. Patents. pl. 14. cites S. C. — Br. Scire facias. pl. 104. cites S. C.

M. was ſeised of an House &c. which he held of the Bishop of Winchester, and would convey the same to the Friars Carmelites, but the Bishop would not consent; whereupon the Friars and the Tenant agreed, that the Tenant should grant it to the King, and he to the Friars, which was done accordingly; and afterwards upon Averment of this Fraud by the Bishop, the Patent was repealed, and the Bishop restored it to his ſeigniory cited Roll R. 168. in the Case of Warren v. Smith Per Houghton, Doderidge, and Coke, as 1 E. 3. 59. Meriot's Case.

The Queen presented where she had no Right, and Quare Impedit was brought against the Incumbent and the Bishop, and adjudged for the Plaintiff. The Defendant afterwards perceiving this, brought Trespass against the Plaintiff, whereupon the said Plaintiff (now Defendant) was outlaw'd, and then the (now) Defendant reſign'd, and the Queen presented him again; whereupon he was inducted, and after the Plaintiff brought a Writ of Error and revers'd the Outlawry; and then brought Scire facias upon the Judgment in the Quare Impedit against the Defendant, where all this Fraud appeared to the Court, and therefore he recover'd the Presentation. cited by Doderidge, J. as Trin. 30 Eliz. Rot. 139. B. Beverley v. Corbet.

2. Scire facias upon Suggestion, that Tenant in Tail, the Reversion to the King, had purchased Licence to alien in Fee, and retook to him and his Feme in Tail, the Remainder to his right Heirs; and Exception was taken, inas much as it was not warranted by any Record, et non Allocatur; for it suffices upon Suggestion. Br. Scire facias. pl. 159. cites 40 Aff. 36.

3. Scire facias was sued to reverse certain Letters Patents made by the King, who was intitled by Office before the Elſcheator, that J. N. committed Treason where he was never indicted of the Treason, and the Tenant pray'd in Aid of the King, and had it; and after Procedendo came, and he said nothing; by which the Court bid the Plaintiff sue Procedendo to Judgment; for this Title is not sufficient for the King, because the Party does not lose the Land 'till he be attainted. Br. Scire facias. pl. 66. cites 8 H. 4. 21.

4. Scire facias was sued to repeal certain Letters Patents of a Grant of a Fair, Ita quod non sit Præjudicium vicinis feriis; and because it surmised to be Nuisance to another Market or Fair, therefore Writ issued &c. Br. Scire facias. pl. 71. cites 11 H. 4. 5.

So a Patent for a Market, where another ancient Market was within a Mile and an half of it, which was much damaged by it, was decreed by Finch, C. and assisted by North, Ch. J. and Jones, J. upon a Scire facias, to be repeal'd, tho' an Ad quod Damnum had issued; and was return'd, that it was not to the Damage of any. 2 Vent. 344. Hill. 21 & 32 Car. 2. in Case. Sir Oliver Butler's Case. — This Decree was affirm'd in the House of Lords. Trin. 1 Jac. 2. 3 Lev. 220. the King v. Sir Oliver Butler. — cites 2 E. 3. 34. Scire facias to repeal a Patent of Toll. And 1 E. 3. 59. b. Of Market. 11 H. 4. 5. Of Market. D. 197, 198, 276. And they said, there never was any Question, Whether the Writ lay, but only of the Manner, and other incident Matters.

5. Scire facias to repeal a Grant of an Office of Auditor for a Feiture in not producing an Account at such Time as he ought to do; and being return'd Warn'd, he made Default; whereupon Judgment was given

given for the Forfeiture, and that the Letters Patent and the Inrol-ment thereof be annull'd. D. 197. b. pl. 46. cites Mich. 14 H. 8. Toly's Case.

Grant of the
Office of the
Sergeant at
Arms, for
not attending

his Office, so that the King's Business remain'd not done, In Contemptum Regis &c. And upon two Nihil's return'd and Default, Judgment was given accordingly, and that the Office be seized into the King's Hands as forfeited &c. D. 198. a. pl. 48. cites Trin. 26 H. 8. Eiton's Case.

6. Altho' the King, as to his natural Person, may be within Age, yet his natural Person being joined with his politick, they are one indivisible Body. And he shall not avoid his *Grants made within Age*, nor his Leases by Nonage, whether he be seized in Tail, or in Right of the Duchy of Lancaster, or in Right of his Crown. The Lands of the Duchy of Lancaster are sever'd from the Possessions of the Crown, as to the Manner of granting them; but for Age, Aid, and such personal Relations, the Duke is as King; but the King may avoid his Grants *by Duress*; as in Case of Rebellion, if the Rebels having the King in Custody extort Grants from him, as it happened in the Case of H. 3. in the Baron's Wars. Jenk. 265. pl. 69. cites 2 Eliz. Plowd. 213.

7. In a Great Vein of Lead, Part of the Earth fell upon a Miner, and kill'd him; Only that Parcel, and not the whole Vein, was forfeited for a Deodand. The King, by his Letters Patents, granted the said Vein to J. S. The Lord Chancellor of England, on the Prayer of the Owner of the said Vein, called in the said J. S. by *Scire facias* in the King's Name, and by the Prerogative Law caused the said Letters Patents to be revoked; because they were obtained surreptitiously, and in Deceit of the King. Jenk. 64. pl. 21.

(U. b.) Who may sue the Scire facias.

1. If by an Office a Tenure is found of the King, and that A. B. is in Ward to the King, and thereupon the King grants the Wardship of A. B. of Body and Land; and after C. D. comes and traverses the Office, he shall have a *Scire facias* against A. B. to repeal his Patent. 4 D. 6. 12.

2. If the King grants two several Patents of the same Thing, the first Patentee may sue a *Scire facias* against the last Patentee, to repeal the last Patent. 37 D. 6. 14. D. 3 El. 197. 45. Divers Precedents shewn accordingly.

S. P. 101
126. pl. 50.
cites 6 E. 4.
9. And note,
that if the
first Patentee

be ousted, he has his Election to bring an Assise or *Scire facias*, if the Patents are for Lands or for an Office for Life. By the Justices of both Benches. Judge Jenkins says, that Regularly the Law is, That the first Patentee may have *Scire facias* against the second, but the second Patentee may have it against the first. — Where two Patents are granted of one and the same Thing, tho' it be known by the Name of the Manor of B. and of the Manor of S. yet if the last ousts the first, *Scire facias* lies to repeal the Patent; and if it be of divers Things, Assise lies, and not *Scire facias*. Br. Patents. pl. 176. cites S. E. 4. 6. — Br. Patents. pl. 62. cites S. C. — *Scire facias* was awarded for a first Patentee to repeal Letters Patents of a subsequent Patentee to be Park Keeper; and upon Return thereof, and a Judgment by Nil dicat, the Judgment was given in Chancery, that the Letters Patents be revoked. Dyer 197. pl. 45. cites 10 H. 8. Hunt v. Coffin.

3. If the King grants two Patents of one and the same Thing, the second Patentee shall not have a *Scire facias* against the first Patentee to repeal the first Patent. D. 10 El. 272. 54. Where it is said, that this is contrary to the Books and Precedents and the Common Course. 39 D. 6. 33. Contra.

4. If the King grants a Patent of Land, or of an Office, he may sue a *Scire facias* against the Patentee to repeal the Patent upon

Pol 102.

an express Condition broken, or for a Forfeiture by Force of a Condition in Law. D. 3 Cl. 197. 47. 4 Cl. 211. 29.

Hill. 3 Jac. 1.

5. If the Predecessor King aliens by Charter any of the Possessions of the Duchy of Cornwall, the eldest Son of the Successor King, being Duke of Cornwall, may bring a Scire facias in the Name of the King to avoid this Patent. Co. 8. The Prince's Case 1. So done and admitted. And Ibidem, fol. 22. b. 23. Diverse Precedents cited accordingly, without any Allegation of any Fraud or Deceit in the obtaining of it.

Br. Scire facias, pl. 175. cites S. C. —

6. 6 Cl. 4. 8. b. The first Patentee of the Office of Clerk of the Crown sued a Scire facias, in the Name of the King, to repeal a second Patent; but there resolved in Cam. Sacce. fol. 9. b. by the Justices, that both ought to be of the same Thing; for if the Patents are of several Things, and the first Patentee is ousted by the second Patentee, the first Patentee shall not have any Remedy by Scire facias, but is put to his Abuse. [Eagge's Case.]

Br. Traverse de Office. pl. 6. cites S. C.

7. Where the King is intitled by false Office, and grants the Land over, he who is grieved may traverse the Office, and have Scire facias thereupon against the Patentee. Nota. Br. Scire facias. pl. 69. cites 9 H. 4. 6.

8. Where a Patent is granted to the Prejudice of the Subject, the King of Right is to permit him upon his Petition to use his Name for the Repeal of it in Scire facias at the King's Suit, and to hinder Multiplicity of Actions upon the Case; for such Action will lie, notwithstanding such void Patent. Per Finch. C. 2 Vent. 344. Hill. 31 & 32 Car. 2. in Canc. in Sir Oliver Butler's Case.

9. Scire facias out of Chancery, returnable in B. R. to repeal Letters Patents of the Rectory of Algate; it was held, that if Letters Patents are granted to the prejudice of any Subject, he may have a Scire facias, upon the Inrolment of them in Chancery, to have them repealed, as well as the Queen may. As if a Fair be granted to the Damage of mine, I may Sue Scire facias to repeal such Grant. Mod. Cases 229. Mich. 3 Annæ. B. R. Brewster v. Weld.

(X. b.) What Thing shall be [or amount to] a Repealing.

1. If the King brings a Scire facias against a Patentee to repeal his Patent, and the Patentee is returned warned, and makes Default, and thereupon Judgment is given against him, by this the Letters Patents are annulled, made void, and of no Effect. D. 3. Cl. 198. 50.

Ward of the Land and Body was granted to A and C — D. came and traversed the Office;

2. So the King granted at several Times two several Patents of one and the same Thing to several Patentees, and the first Patentee brought a Scire facias against the second Patentee to repeal his Patent, who is Returned Warned, and makes Default, upon which Judgment is given against him. His Patent is by this annulled, made void, and of no Effect. D. 3. Cl. 198. 50. 37. D. 6 14.

and had Scire against A. B. and was warned and made Default; & per Curiam, by this Default his Letters Patents of the Ward are void; Brook says, enquire if the same Law be upon every other Scire facias to repeal a Patent, and says it seems clearly that it is. Br. Patents, pl. 20. cites 4 H. 6. 12. — And upon this another Patent was granted of the Land by the King to C. D. until it fell to be discussed between him and the King in the traverse, and after C. D. was inquired; and per Cheney and Hales Justices, by the Nonsuit this is a Discussion of the Traverse, and therefore the Second Letters Patents are void also, quod nota Br. ibid. S. P. And this Judgment shall be pleaded against the Patentee in any Court. Br. Patents. pl. 23. cites 37. H. 6. 14. — Br. Scire facias, pl. 138. cites S. C.

3. The King granted to A. B. these Liberties, viz. to be exempt from Tithes and Inquests &c. and after a Franchise is granted by this King, some Law

pealed by Act of Parliament. Quære, if Liberties are Repealed by this Word Franchises? Br. Repellance &c. pl. 7. cites 34. H. 6. 25.

4. The Chancel'or of England demanded of all the Justices, that Where the Inheritance of the Crown of England, and of France, with all Pre-eminences and Prerogatives were given by Act of Parliament to H. 7. and to the Heirs of his Body, Whether the Liberties and Franchises were by this resumed; and they answered that it was not; the Reason seems to be inasmuch as it shall be intended such Things were in the Crown at this Time, and not those which other Men had by good Title. Br. Repellance &c. pl. 5. cites 1 H. 7. 13.

5. 34 & 35 H. 8. 21. Provides that (notwithstanding this Act) the King's Grants of Offices, and their Fees for keeping of Castles, Houses, Parks, Chaises, Forests, or Block-Houses, shall be void, when the Cause of exercising such Offices is determined.

(X. b. 2.) Patentee. Ousted How.

WHERE the King is intitled by Office to a Ward, or such like, and grants the Land over by Patent, and during the Nonage one comes and traverses the Office, or makes Petition, and this Matter is found for him, Scire facias shall be awarded against the Patentee, to say why the Party should not have Execution; And so see that the Patentee shall not be ousted without being warned by Scire facias. Br. Scire facias. pl. 156. cites 37. Aff. 11.

2. If the King cause his Valet to be admitted to a Corody in an Alley, of which he is not Founder in Jure Coronæ, by which the Abbot sues by Petition, and upon the Matter discharges the Corody, he shall have Scire facias against the Valet to remove him, though the Name of Valet be not named in the Petition; Per Justiciarios; But in a Petition of Land he shall not have Scire facias against the Tenant for Term of Life of the Lease of the King &c. unless he be named in the Petition; For it ought to appear in the Petition in whom the Franktenement is; quod nota, the Difference; For there the Land is demanded; But in the other Case the Corody is not in Demand, but it is to discharge the Corody. Br. Scire facias. pl. 169. cites 5 E. 4. 122.

(X. b. 3.) Patents Repealed. Pleadings.

1. AN Office found, That M. the Tenant of the King died seised, His Hen within Age, and the King granted the Ward to W. and the Feoffees traversed the Office, that the Tenant infeoffed them, Absque hoc, that he died seised, and had Scire facias against the Grantee to repeal the Patent, who came and said, That another Office is found that the Feoffment was by Collusion to tell the King of the Ward, and demanded Judgment, if he should be answered to the Scire facias this Office not being traversed, &c. non allocatur, because it was found pending the Writ; But yet the Defendant was suffered to plead the same Matter to save his Patent; and so he did, and said, That the Feoffment was by Collusion &c. and thereupon were at Issue. Br. Scire facias, pl. 79. cites 11 H. 4. 80.

Br. Traverse de Office. pl. 11. cites 21 E. 3. 2.

2. Where the King has a Manor in Ward, which is known by the Name of the Manor of B. and of the Manor of S. if he grants the Custody of the Manor of B. to one, and after grants the Custody of the Manor of S. to another, Br. Scire facias pl. 170 cites S. C.

other, and he cuſts the firſt Grantee, and he brings Scire facias to repeal the Patent, he ought to ſurmife, *That the Mener of S. and B. are all one* &c. ſo that it may appear, that the Patents are of one and the ſame Thing; For if they are of *divers Things Affiſe lies, and not Scire facias.* Br. Patents, pl. 63. cites 8. E. 4. 6. per Markham and Choke.

3. Where Scire facias iſſues at the Suit of the King, *the Cauſe of the Forfeiture of the Thing is touched in the Writ; But otherwiſe in other Scire facias's ſued by one Patentee againſt another.* D. 198. b. pl. 50. And vide Ibid 197. pl. 45.

(Y. b.) *What ſhall be [ſaid to be a] Grant againſt the Law.*

1. **If the King grants to another that he ſhall not be puniſhed for any Felony which he ſhall do in the Time to come, this is void; be-
cauſe it is againſt common Right and Juſtice.** 19 D. 6. 62. b.

As if the King grants to J. N. that I ſhall not have Action againſt him, where he is indebted to me, this Grant is not good; per Cott. Juſtice. Br. Patents. pl. 15 cites 8 H. 6. 19.

Grant by the King, *that a Man ſhall not be impleaded* is void. Br. Jurisdiction. pl. 39. cites 8 H. 6. 18. S. P. Br. Patents. pl. 15. cites 8 H. 6. 19.

S. P. Noy in the Caſe of Andrews v. Webb.

3. **The King cannot grant to any to hold a Court of Equity; Be-
cauſe this is in Derogation of the Common Law.** Heb. R. 87, 88. between Martin and Marſhall. Not to the Queen.

Br. Jurisdiction, pl. 59. cites S. C.

4. Trefpaſs of Goods carried away againſt T. C. who pleaded to the Jurisdiction, becauſe he is Chancellor of Oxon, and H. 4. granted to J. K. Chancellor of Oxon. and his Succeſſors, *that they ſhould not be impleaded by Writ of Trefpaſs, nor Contract for Things done by their Office,* and ſhewed that he diſtrained by his Office for not making of a Pavement; and the Opinion of the Court was, that the Grant is not good; For it is *contrary to Law and Juſtice,* that a Man ſhall not be impleaded in any Place. Br. Patents, pl. 15. cites 8 H. 6. 19.

5. And alſo the ſaid T. C. came, and ſaid that he is Chancellor of Oxon. and that King R. 2. had granted to J. K. Chancellor, and his Succeſſors, that they ſhould have *Conſſance of all Pleas moved in Curia Regis, whereof the one Party was Clerk of the Univerſity, and abiding there,* and ſaid that he is Clerk, ſcilicet Doctour of Divinity, and abiding there, and prayed the Conſſance; and by the Opinion of the Court he ſhall not have it, becauſe he is Party, and cannot be indifferent in his own Caſe. And per Martin and others, the Grant is not good, unleſs it were *licet idem Cancellarius fuerit Pars,* and if it had thoſe Words, yet it is not a good Grant, unleſs the Grant be alſo, *that then he may make a Deputy or conſtitute another Man to be Judge;* For he himſelf cannot be Judge and Party by theſe Words (*licet fuerit pars*) and the other Juſtices in the ſame Opinion. Br. Patents. pl. 15. cites 8 H. 6. 19.

6. A Man has Liberty to ſue where he will, but the King may prohibit him of it; As if he grants to J. S. *that of all Trefpaſſes done in his Manors the Plea ſhall be before him;* Per Babington Ch. J. Ibid.

Brook ſays, And ſo ſee that the King cannot alter a Law by his Grant, and yet he may grant Conſſance of Pleas, but not to alter the Nature of the Plea nor the Nature of a Court. Ibid.

7. Where Rape is made Felony by Statute, it is not inquirable as Felony unleſs before Juſtices who can hear and determine Felony; the King cannot make it inquirable in Leet by his Grant, nor grant the Leet to be of other Nature than at Common Law. Br. Patents, pl. 53. cites 6 H. 7. 4. by the Juſtices.

8. It seemed to some, that by *Common Law* the King might *prohibit the importing Goods*, and that for doing contrary to such Prohibition *the Ship should be forfeited*; But this Law is *altered by several Statutes*, viz. 11 R. 2. 11. 25 E. 3. 2. &c. But Quære if the King makes such Grant *with special Non-Obstante* of those Statutes. Sid. 441. Hill. 21 & 22 Car. 2. B. R. in Case of *Horne v. Ivy*.

9. The King by his Patent cannot grant *that a Subject's Goods shall be forfeited* by his doing a Thing which his Patent prohibits. Sid. 441. Mich. 21 & 22 Car. 2. B. R. *Horne v. Ivy*.

See Vent. 47
Contra per
the Ch. J.
Mich. 21
Car. 2. S. C.

(Z. b) Grant of the King *limited*. [By Reference to Words &c.]

1. If the King grants the Manor of D. to J. S. and his Heirs, and within the same Manor to have Waifs, Straves, Bona & Catalla Felonum &c. dicto Manerio spectant. & pertinent Those Words, dicto Manerio spectant. & pertinent. do not refer to the Goods or Felons or other Franchises which lie in Point of Charter which cannot be by any Usage or Time appendant or appurtenant to a Manor; But they shall pass by this Grant, tho' they were not ever demised or used with the Manor. Co. 9. Ab. Srra. Bar. 27. b. per Curiam.

See (I. b) —
(K. b) — (L.
b) — (A. c)
to (E. c) and
(R. c)

Jenk. 325.
pl 40. —
S. C. cited 2
Mod. 107.

2. If a Portion of Tithes in Lougham appertaining to the Rectory of Gresham which was a Rectory Presentative, and all the other Tithes were Parcel of the Rectory of Lougham, which was appropriated to the Abby of D. which came to the King by the Dissolution of the Abby, and the King grants * totam illam Portionem Decimarum & Garbarum suarum in Lougham in Com. Norfolk, cum omnibus aliis Decimis suis quibuscunque in Lougham in dicto Com. Norfolk tunc vel nuper in Occupatione Johannis Corbet, where in Truth John Corbet never had any Tithes in Lougham in his Occupation. This Grant is utterly void; For the last Words in the Occupation of John Corbet refer to all the Sentence, as well to the first Words as to the second Words, and here a Portion of Tithes in gross was intended to be passed and not All the Rectory, and here all ought to pass or nothing. Co. 4. Bozoun 34. b. resolved.

Godh. 35.
Mich. 27 E.
lia. S. C. by
Name of
Futter v.
Boroome.

* Fol 103.

3. If two Rectories appropriate in one Church in one Parish comes by 31 H. 8. to the King by the Dissolution of a Hospital to which it was appropriated, and the King grants this by the Name of a Rectory, but before this Grant in the same Patent there is a general Grant of all the Lands and Hereditaments which ever belonged to the Hospital, and the Hospital itself, and after the Grant of the Rectory there is also a general Grant of all Lands, Tithes, and Hereditaments in the Vill, where those Rectories lie, at any time to the said Hospital [belonging.] Tho' the Grant be void in the Grant of the Rectory, it being two Rectories, yet the general Words shall pass it. Mich. 15 Car. 2. B. R. per Curiam, resolved upon Evidence upon Trial at Bar, which concerns Mr. *Stoughton* for the Rectory of *Hourtou* in Com. Warwick, which came to King H. 8. by 31 H. 8. by the Dissolution of the Hospital of St. John's in Warwick to which it was appropriated.

(L. b) pl. 6.
S. C. 10. 146.
Stoughton v.
Palmer. S. C.

4. Ed. 6. being seised of the Rectory of D. in Hampshire, granted it to B. by these Words, *Totam illam Rectoriā de Danc, ac omnes Decimas &c. Quæ quidem omnia & singula Præmissa modo extenduntur ad verum valorem de 32 l. per Annum.* At the Time when this Grant was made, there was a Farm in the Parish, which, with the Tithes therein, was in

Lease made by the Abbot Anno 16 H. 8. referring Rent, which continued till the 16 Eliz. And the Question was, Whether the Grantee of the Rectory, after the Expiration of the Lease, should have the Tithes of this Farm? And adjudged, That he should; For tho' the Words (Quæ quidem omnia) in the Grant refer to the Value of the other Tithes and not to those of the Farm, (because they were then suspended by being in Lease with the Farm), and probably the King intended to grant no more than Tithes of that Value expressed in the Grant; yet by the General Words of Totam Rectoriâ, the Tithes of this Farm will pass; but otherwise, if there had been any special Words. 2 Roll. Rep. 118. Mich. 17 Jac. B. R. Dixon's Case.

See I b) —
(K b) — (L b) — (Z b)
(B c) — (C c) — (D c)
(E c)

Gawdy and Popham held, That the Clause being general, of all Liberties and Privileges &c. it is to be intended of such Liberties as the Dean and Chapter had and were not resumed by any Statute. But this Liberty to be discharged of Purveyance was resumed by the Statute 27 H. 8. wherefore it shall not be revived by General Words, but by a special Grant of those Liberties by express Name with an express Non Obstante of that Statute, so that it might appear that the King intended to grant them notwithstanding that Statute. Cro. E. 512. Lord Darcy's Case. S. C.

(A. c) What Things shall pass by General Words [of Reference to former Grants.]

1. **T**HE Dean and Chapter of D. were seised of diverse Manors in Essex in Fee, and in the 1 E. 4. the King granted to them and their Successors, that they should be discharged of all Purveyors of the King in their Manors in Essex, and after by 27 H. 8. cap 4. it was enacted, that the Purveyors of the King might purvey in all for the Provision of the King, as well within Liberties as without, notwithstanding any Grant to the contrary, and after in 35 H. 8. the Dean and Chapter surrendered those Manors to the King his Heirs and Successors, and afterwards the King granted those Manors to the Ancestors of the Lord Darcy with tot tales tantas & hujusmodi Libertates, as the Dean and Chapter or any of their Predecessors habuerunt aliquo Statuto Non Obstante. In this Case, in as much as the ancient Liberties were extinct by the Statute, this General Grant shall not create de Novo the said Liberties which the Dean and Chapter had before. Cr. 38 El. B. R. adjudged. Vide, that by the Surrender to the King they were extinct if they had not been extinct before.

S. C. cited as agreed in the Exchequer about 20 Eliz. Cro. E. 513 in the Lord Darcy's Case.

2. The Bishop of Coventry, among other Liberties, had a Liberty de Catallis Felonum within his Manor of B. and after this Manor came to R. 8. by Attainder, and he granted it over with tot tales tantas & quales Libertates as the Bishop or his Predecessors had. The Grantee shall not have by this Grant the said Liberties which the Bishop had. For when they are once extinct, Words of Reviver will not be sufficient, but there ought to be Words of Grant, and such general Grant will not be sufficient. 25 El. in Scacc. Lord Paget's Case, per Curiam, cited per Coke 38 El. B. R. Quere.

3. Where the Vill of L. claims Liberties by Grant of the King, by these Words such Liberties and Franchises as the Vill of N. has &c. they ought to shew Record or Prescription proving what Liberties and Franchises N. has, and then it is well as it seems there. Br. Patents, pl. 31. cites 20 E. 3. and Fitzh. Avowry 129.

S. C. cited Pl. C. 12. in Case of Reniger v. Fogolia.

4. If Garter dies, and the King grants the Office with such like Fees and Wages as Garter had, this is a good Grant, per Choke; which was affirmed, that is to say, to have such Fees as Garter had. Br. Patents, pl. 60. cites 5 E. 4. 8.

5. In Trespass &c. the Defendant justified, for that Northampton is an ancient Town, and that King H. 7. granted to the Mayor and Burgesses a Fair to be held yearly upon the Feast &c. Cum omnibus Libertatibus &c. to the said Fair belonging; Then he set forth, that W. R. at a Fair there holden, sold a Cow to the Plaintiff, for which the Defendant demanded one Penny for Toll; and because the Defendant refused to pay it, he as Bailiff distrained the Cow; Upon a Demurrer to this Plea, it was adjudged, That by the Grant of a Fair, Cum omnibus Libertatibus, Toll was not due nor demandable, because it is not incident to a Fair; It is true, that such Liberties which a common Person hath either by Grant or Prescription, and which the King himself should have throughout England, as *Wais, Fstray, Wreck* &c. There if a common Person hath them by Grant or Prescription, and they come to the King by Forfeiture or otherwise they are extinguished in the Crown, and the Queen shall have such Liberties by her Prerogative, and they cannot afterwards be granted but by a new Creation. But where a common Person hath Liberties, which the King would not have by his Prerogative, if such common Person had them not, as *Warren, Park, Fair, Market with Toll* &c. if these come to the Crown, they are not extinguished, but remain in Esse; For if the King should not have them by this Means they would be lost. Wherefore, absente Clench, it was adjudged for the Plaintiff. Cro. E. 558. 591. Mich. 39 & 40 Eliz. B. R. Heddy v. Wheelhouse.

6. The King was Lord Paramount, the Abbot of Westminster was mesne, and C. was Tenant of the Manor of R. The Tenant was attainted of Treason, and after Office found, the King granted the Manor to Sir J. M. and his Heirs, to hold de nobis & Successoribus nostris, and other chief Lords of the Fee, per Servitium inde debita &c. It was insisted, That the Tenure should be of the King, because the Mesnalty being extinct by the Attainder of the Tenant, (for where there is no Tenant there can be no Mesne) there could not be any Services due to him; But adjudged, That the Words are sufficient to create a Tenure in the Mesne as it was before the Treason; For such was the King's Intention; and it is consonant to Equity, that he who never offended should not lose his Services, and therefore the Grant shall be taken beneficially for the Honour of the King and the Relief of the Mesne, and the Word Tenendum cannot have any other reasonable Construction. 6 Rep. 5. b. Hill. 40 Eliz. in the Exchequer, Sir John Molyne's Case.

(B. c) Grants of the King. [To what the Words shall extend.]

See (I. b) —
(K. b) —
(L. b) —
(Z. b) — A.
c — (C. c) —
(D. c) —
(E. c)

1. IF the King grants to another All Issues, Forfeitures, Fines, and Amercements of his Tenants, and a Tenant, who holds of the Grantee and of another, * be amerced, the Grantee shall not have this Amercement, because he is not his sole Tenant. 22 Ass. 49. per Richur.

Br Patents,
pl. 32. cites
S. C. —
* Fol. 194.
— S. P. Br.

Grants 146. cites 2 R. 3. 4. But he shall have Fines and Amerciaments of those who hold of Him Only. — But Br. Patents, pl. 90. cites 2 R. 3. 4. Contra, that he shall have it of those who hold jointly of him and of others, as it was said. But Brooke makes a Quære. — Where the King grants Fines and Amerciaments to J. N. in his Manor of D. and he does Trespass, there he shall not have Fines and Amerciaments depending upon it. Br. Grants, pl. 31. cites 21 E. 3. 3, 4. — The King's Grant to A. of all Fines and Amercements to the Tenants of A. does not pass Fines and Amercements imposed in the King's Bench, Common Pleas, or Exchequer, nor before Justices of Gaol Delivery, Justices of the Peace,

er the Market, upon any of the King's Officers who are Tenants to A. For these Fines are Royal-tye, and ought to have special Words to pass them. Jenk. 103. pl. 100. cites D. 268. 2 H. 7. 7. 22 Aff. 49.—So where there are Tenants of A. and a Fine or Amercement is assised upon one who is Tenant both of the King and A. this Fine &c. does not pass without special Words to grant the Fines and Amercements *habeat Tenentium & Non integro Tenentium*. Jura Regis specialia non conceduntur per Generalia Verba. Jenk. 103. pl. 100.

2. If the King grants all his Lands and Hereditaments of such a Priory in such a City, a Mill whereof the King is seised with other Lands Parcel of the Priory shall pass by those general Words, tho' a Mill ought to be demanded in a Writ by special Name. D. 37 El. 23. R. per Curiam.

D. 352 b. pl. 21. Pach. 18 Eliz. Case of the Rectory of West

3. So if the King grants all his Lands, Tenements and Hereditaments in D. the Advowson of the Vicarage shall pass by it. D. 37 El. B. R. in the said Case held.

Bodwin — Beadl 252. S. C. — S. C. cited 10 Rep. 65. b. in Whistler's Case — In Quare Impedit, where the King, seised of a Manor with Advowson appendant, grants the Manor without speaking of the Advowson, the Advowson does not pass; but where it is appendant, and the King grants the Manor, *Habendum cum the Advowson*, this passes well; for it is appendant. Br. Patents, pl. 29. cites 28 H. 6. 34. 35. — *Contra*, if it was Advowson *in gross*; for there the Grant is void as to the Advowson, unless it be expressed as well in the Grant as in the *Habendum*. Br. Patents, pl. 29. cites 30 H. 6. 34. 35.

Dav. Rep. 16 a. Mich. 5 Jac. B. R. S. C. in the Case of Customs. And it was also resolved by the Lord Ch. Baron, and other Referees here in England, that the said Grant (that they should be *Quieti de omni Consuetudine*) did not discharge them of the Grand Custom; because *Consuetudo est Nomen æquivocum*, and signifies several Kinds of Customs; and so, being a general Word, shall never pass this special Royal Duty. — So where the King granted to the Burghesses of Drogheda, That they should be discharged *De Theoloneo, Passagio, Pannagio, Laffagi &c.* And it was resolved by the Ch. Baron, and other Referees in England, that by Force of this Word (*Lastagio &c.*) they should not be discharged of the Grand Custom of 12 s. 4 d. payable for every *Last of Hides*, because there is a *Last of Herrings* and a *Last of Powder*, and of several other Things as well as of *Hides*. Dav. Rep. 17. a. in the Case of Customs. — But where H. 5. granted to the Mayor, Bailiffs and Citizens of Waterford in Ireland, *Customam dictæ Civitatis vocatam le Cocquett capiendum per Manus dicti Majoris & Ballivorum in perpetuum*. And it was resolved that the Ancient Custom of Wool, Woolfells and Hides, was well granted to the said Corporation by the Words of (*Customo Vocat. le Cocquett*;) for this ancient Custom is commonly called and known by the Name of the *Cocquett Custom* in all Ports of England and Ireland: And (*Customa dictæ Civitatis*) shall be intended Custom payable for Merchandizes in dicta Civitate; for favourable Interpretation shall be made of such Grants, according to the Usage and Allowance. Dav. Rep. 14 a. Mich. 5 Jac. B. R. in Ireland, in the Case of Customs.

4. D. 2. granted to the Burghesses of Dublin *Quod sint quieti de Theolonio Passage Pontage, & omni Consuetudine per totam Terram nostram Angliæ, Normaniæ, Walliæ & Hiberniæ, Ubi cunque venerint ipsi & res eorum*. Tho' the Citizens have been always since this Grant till this Day exonerated of the Great Custom which is called *Magna Antiqua Custuma* in Anglia, & *Magna Nova Custuma* in Hibernia, yet they shall not be discharged of the said Custom by this Charter; for the Words (*Theolonium & Consuetudo*) may be applied to diverse Things; and where the Words in the King's Grants may be applied to diverse Things, they shall not be extended to the said Grand Custom, which is the ancient Inheritance of the King, by any Usage whatsoever. H. 16 Ja. Scacc. Resolved. Quere.

(that they should be *Quieti de omni Consuetudine*) did not discharge them of the Grand Custom; because *Consuetudo est Nomen æquivocum*, and signifies several Kinds of Customs; and so, being a general Word, shall never pass this special Royal Duty. — So where the King granted to the Burghesses of Drogheda, That they should be discharged *De Theoloneo, Passagio, Pannagio, Laffagi &c.* And it was resolved by the Ch. Baron, and other Referees in England, that by Force of this Word (*Lastagio &c.*) they should not be discharged of the Grand Custom of 12 s. 4 d. payable for every *Last of Hides*, because there is a *Last of Herrings* and a *Last of Powder*, and of several other Things as well as of *Hides*. Dav. Rep. 17. a. in the Case of Customs. — But where H. 5. granted to the Mayor, Bailiffs and Citizens of Waterford in Ireland, *Customam dictæ Civitatis vocatam le Cocquett capiendum per Manus dicti Majoris & Ballivorum in perpetuum*. And it was resolved that the Ancient Custom of Wool, Woolfells and Hides, was well granted to the said Corporation by the Words of (*Customo Vocat. le Cocquett*;) for this ancient Custom is commonly called and known by the Name of the *Cocquett Custom* in all Ports of England and Ireland: And (*Customa dictæ Civitatis*) shall be intended Custom payable for Merchandizes in dicta Civitate; for favourable Interpretation shall be made of such Grants, according to the Usage and Allowance. Dav. Rep. 14 a. Mich. 5 Jac. B. R. in Ireland, in the Case of Customs.

5. Presentment was made against an Abbot for suffering a Bridge to fall, which he and his Predecessors Lords of the Vill had used to repair Time out of Mind. The Abbot pleaded the Charter of H. 3. to be quit of Reparation of all Bridges, Walls and Causeways, and that this Charter had been allowed in Quo Warranto &c. yet this Plea was not allowed; for this was a special Charge or Duty by Reason of his Seignory, which is not discharged by this general Clause; for where there are Words in the Grant of the King, which under a general Name comprehends Things Royal, and Base Things, it shall be taken in Favour of the King, and the Base Things shall pass, and the Royal Things shall remain in the Crown. Dav. Rep. 17. cites 3 E. 3. Fitzh. 445.

S. P. Pl. C. 333 in the Case of Mines

Br. Con-
fance, pl 12.
cites S C —
S P 'Two'
the Grant be

his Prerogative
pro Invenit;
Gawdy J.
the Queen's
and the same
388. Patch.

It is said in
the Books,
That if a
City or
Town Cor-
porate have
used Time
out of Mind
to hold all
Manner of
Plens, as
well Real as
Personal, or
has any such
Franchise by

Franchise by

Not by this
Word *Plu-*
cium a Man
perelz. Ibid.

cannot have *Hyfe*; for it is *Querela*. Ibid.

And grant to
me and my
Heirs to be
quit of Tax
and Toll is
good, tho' no
Tax or Toll
be in Eff^e at
the Time.
Ibid.

ibid.

- 5 C. circ.
 2 Jack 5 5
 1 1 1

the King, who granted the *Appurtenances* to W. D. for Years, together with all Rents, Services, Profits and Hereditaments thereunto belonging; but did not expressly mention the Reversion, nor was there any Recital of the Lease of the Scite and Demesnes aforesaid; but a Rent of 74l. was reserved to the King upon the Lease of the Manor. By the best Opinion the Reversion pass'd by Name of the Manor. D. 233. pl. 10. Mich. 6 & 7 Eliz. Aprice v. Rogers, alias Sir Walter Dennis's Case.

13. King H. 8. granted to A. *Turbariam suam* in D. for 21 Years; the Grantee plow'd Part of it, and then Q. Mary granted to B. *Totam illam Turbariam* before demised to A. It was adjudged, that the plow'd Land did not pass, but only that which was Turbary. Owen 67. 23 Eliz. C. B. Farrington v. Charnock.

14. The King granted the Manor of B. to J. S. in Tail Male, and afterwards by another Patent, reciting the former, and the Surrender thereof &c. *De Gratia speciali, ex certa Scientia &c.* he re-granted the said Manor to the said J. S. and M. his Wife, and to the Heirs of the said J. S. It was resolved, that by the Grant of the Manor without the Word Reversion, the Reversion pass'd; for the Word *Manor* includes all Estates and Degrees of Estates of, or in the Manor. 6 Rep. 56. Trin. 4 Jac. Lord Chandos's Case.

It is said of the Reversion, and afterwards by his Letters Patents grants *Manerium de D.* to another and his Heirs; in this Case, tho' the King grants the Manor of D. as in Possession, yet the Reversion shall pass; for the King has an Estate (viz. the Reversion in Fee) grantable in him, and the Estate Tail by a Common Person, need not be recited. And this is not like to *Alton Wood's Case*; for the King was not Consultant, nor informed of his true Estate, viz. that he was seized in Tail with the Reversion expectant to his Heirs and Successors; and his Grant in the same Case cannot take Effect without Fraction of Estates, or doing a Tort, and therefore not like to the principal Case; for here the Party hath informed the King of the Truth of all Matters of Fact, viz. of the Estate Tail, and of the Delivery of the former Patent; so that in true Judgment of Law upon the Matter contained in the Patent, the King has only Reversion in Fee expectant upon Estate Tail. And in this Case no Tort is done to any, nor is there any Fraction of Estates; and here the *Intention of the King* was to depart with all his Estate, and lest small pass by this Grant (viz. the Reversion) than he intended to pass; for he intended to pass the Possession, and so he is not at any Prejudice. But if more should pass than he intended, As where he intended to pass only a Reversion, and there a Possession should pass, in such Case it would be otherwise; Besides, this Grant being made *Ex certa Scientia & mero Motu*, shall be taken in the most benign and liberal Sense, according to the King's Intention and Meaning express'd in his Grant. 6 Rep. 56. S. C.

See (I b)
(K. b) (L. b.)
(Z b) (A c.)
(B c.) (D. c.)
(E c.)

(C. c.) Grant of the King. [What shall pass by general Words.]

If battle can
grant only by
his Prerogative

1. **T**HE Right of the King shall not pass by general Words. 8 D. 4. 2.
none can never pass by general Words; and therefore *Choses in Action* will not pass without special Words. 12 Rep. 2. Patch. 4 Jac. Ford v. Sheldon.

Br. Forfeiture de Terres, pl. 11.

2. By a Grant de Bonis & Catallis felonum, Goods of a Felo de se shall not pass. 8 D. 4. 2.
cites S. C. Per Till. — S. P. Nor Debts of Felons. Vent. 32. Anon. — Saund. 275. The King v. Sutton. — Le 99. Arg. — Roll R. 399. The King v. the Bishop of Durham. — Sid. 142. Southampton (Mayor) v. Richards. — Nor Obligations; Per Shute, Owen 155. 3 & 31 Eliz. in Case of Bishop of Canterbury v. Hudson, cites 19 H. 6. 42. — Unless by special Words 2 Le 51. — Nor those Goods which the Felon has stolen, but only his own proper Goods. Per Coke C. J. 3 Bullst. 148. in Prin- ston's Case — 12 Rep. 73. S. P. — Jenk 325. pl. 40. — But such Grantee shall, without Doubt, have the ready Money; for ready Money may be granted by that Name, tho' not demanded by the Name of Bona. 2 Show. 153. Mich. 32 Car. 2. B. R. Anon.

The Admiral in his Patent has granted to him *Bona Piratarum*. Resolved by all the Judges, that the Goods of Pirates pass by this Grant, and not personal Goods. Jenk 325 pl. 40.

Quere,

Quere, If the *Presentation of a Church*, which becomes vacant during an *Outlawry* of the Patron, shall pass by the Words in a Grant of *Bona & Catalla Peiorum Fugitivorum & Uclagatorum*. *Walsley* and *Periam* were of Opinion that it would pass, but *Shute* and *Anderson* contra. *Owen* 155. The King v the Archbishop of Canterbury & Hudfon.

3. Nor of a Clerk convict. 8 H. 4. 2.

Br Forfeiture de terres. pl. 11. cites S. C. Per TIL.

4. Nor of one who is put to Penance. 8 H. 4. 2.

S. P. Raym. 242. cites S.

C. — S. P. Unless in a County Palatine. Per Coke, Ch. J. 3 Bull. 156. in Case of the King v. the Bishop of Durham. — D. 208. b. pl. 18. Quere — They will not pass unless there are Words specially extending to the Goods of such a Person, because one adjudged to his Penance for standing mute, does not seem to suffer as a *Tenant*, being neither arraigned nor convicted of any Felony, but as a Person refusing to stand to the Law of the Land. And it seems rather the stronger Opinion, that they pass not by the Grant of all *Goods & Tenements, or all Persons within such a District*; so that if such Person for any Trespass, or other Fault, ought to lose Life or Member; or shall fly and refuse to stand to Judgment, or do any other Trespass for which they ought to lose their Chattels. 2 Hawk. P. C. 3. 31 cap. 3. S. 21.

5. By a Grant of the *Goods* *Etiam qui pro aliquo Delicto Vitam vel Membrum amittere debeant*, the Goods of one who is put to Penance shall not pass. 8 H. 4. 2. *Quaeritur*.

In Appeal the Defendant was adjudged to Penance for

standing Mute, and he had Goods, and the Bishop of L. claim'd them by Grant of the King, that he should have *Catalla Piorum & Peiorum & de omnibus Hominibus & Tenementis in terris suis, & de omnibus Rigidibus et terris predictis*. *Item quod predicti homines tenentes aut redditores aut ceteri aliquis in terris predictis pro aliquo Delicto aut Transgressione vitam vel membrum amittere debeant aut debet, aut iurarent vel iurent, aut iudicio stare vel iudicent, vel aliter non eam Tenentem personam pro qua ipsa catalla vendere debeant in quocunque loco possessionis de eis per debet fieri in curia nostra per in alia curia & a curia per ipsius Episcopi & per Nos pro in manibus nostris & per ipsius nos tenentes*. And by Galloway, Firwar, and others, the Bishop shall not have the Goods, for the *Plena* was not judic'd for the *Felony*, but for the Contempt, and shall not pass from the King by such general Grant: for if a Man commits *Treason*, there the Bishop shall not have the Forfeiture. But Huls, Skrene, and others, to the contrary, for he loses his Life by this Judgment, therefore the Bishop shall have the Goods. And be the Statute of West. 1. c. 12. If a Man stands mute in Appeal, he shall be convicted and shall forfeit his Goods as non Defendendo, and the Statute gives no more but that he shall be put to Penance. But it was agreed by all, that the Goods are forfeited, & Adjourn'd. Br. Forfeiture de Terres. pl. 11. cites 8 H. 4. 1 & 2.

6. If the King grants all Forfeitures of the Tenants of the Grantee for any Trespass or any other Offence, for which they shall lose Life and Member, or aliquo alio Delicto for which they shall lose their Chattels; yet Forfeitures for Contumacy, as Forfeiture of Goods upon Outlawry in Trespass, shall not pass thereto. 11 H. 6. 50. b. So Forfeiture of Goods upon Premunire.

7. The King may grant *Liues* and *Amerciaments* by general Words. 9 H. 6. 27. b.

Br. Patents. pl. 4. cites S. C. —

S. of Grant of *Catalla Peiorum & Fugitivorum*. Br. Patents. pl. 4. cites S. C. — S. of Grant of *Consuetudine* of *Forest* & *all the Courts* & *offices*. Br. Ibid. — If the King grant to me all *Forest* and *Amerciaments* in the County of B. and I am amerced there, I shall not have the *Amercement*; for it shall not be intended the Will of the King. Per Martin. Br. Patents. pl. 15. cites 8 H. 6. 19.

8. By such Grant *Forfeitures of Goods* upon a Premunire for Non-appearance, by which the Party is put out of the Protection of the King, do not pass. 11 H. 6. 50. b.

9. *Prærog. Reg. cap. 15. 17 E. 2. The King's Gift or Grant of Land or Minors cum pertinentiis conveyeth not Knight's Fees, Advowsons, or Dower, without express Words.*

Where the King has a Corody, the Patronage of a Par-

och, and grants the Patronage to another, without making mention of the Corody, he who has the Patronage shall have the Corody; and the King cannot grant or give the Corody, but to one Woman; nor the King cannot reserve the Corody, where he parts with the Patronage. And to let a Thing cannot be taken from the King by general Words, and by reason of another Thing, without express Mention. And other Things are at Common Law, as (Brook says) it seems here, and are not taken by Heinty of the Prerogative, as is manifested by the Gift of the Corody. Br. Patents. pl. 34. cites 26 Aff. 52. — 1 R. 2. c. 4. b. in Whittier's Case, cites S. C. 30 Aff. 10. 20 Aff. 52. where it is said that it is so by (55.0)

If the King grants to J. N. *Manor or Land &c.* and does not make mention of Fees of Knight and * *Advowsons*, there those do not pass; for they do not pass without express Words. Br. Patents. pl. 5. cites 41 E. 3. 5. — But where the King makes Livery to an Heir, or makes *Restitution* or Grant of *Temporalities* to a Bishop, there those pass without express Words. Note the Diversity. Ibid. — Br. Livery. pl. 20. cites S. C. & 21 E. 3. 40. — Br. Livery. pl. 45. cites S. C. — Br. Patents. pl. 75. cites S. C. — * S. P. Per Weston, J. Pl. C. 243. cites *Treatise of Prærogativa Regis*. cap. 15.

In *Quare Impedit*, the Case was, that King H. before the Statute of *Prærogative*, granted a Manor to J. N. without expressing the *Advowson*, and without saying *Cum Pertinentiis*; and yet by Judgment the *Advowson* passes, because it was appendant to the Manor; but now by the Statute of *Prærogative*, *Advowson*, *Dower*, Fees of Knight, do not pass, unless expressly mention'd; and that if a Common Person be seised of a Manor with *Advowson* appendant, and grants the Manor *cum Pertinentiis*, the *Advowson* passes. Br. Patents pl. 6. cites 43 E. 3. 22. — Br. *Prærogative*. pl. 7. cites S. C. — 10 Rep. 64. in Whittler's Case, cites S. C.

This Act is restrained only to these three Cases of *Advowsons*, Knight Service, and *Dower*; for *Leet* shall pass without express Mention, or Words equipollent, as is held in 18 H. 6. 12. So of *Forest* appendant to an Honour, as is agreed in 26 Aff. 60. So of *Corody* appendant to a Patronage of a Priory, as appears in 26 Aff. 62. And the Words of the Act are *Quando Dominus Rex dat vel concedit*, and therefore in Case of *Restitution*, *Advowsons* &c. shall pass without express Mention of them, or Words equipollent, as in *Livery to the Heirs*. 2dly, In *Restitution of Temporalities to the Successor of the Bishop* &c. 10 Rep. 64 b. cites 41 E. 3. 5. b. 27 Aff. 48. Pl. C. in Lord Barkley's Case. 251, 252, 25 Eliz. D. 306. accordingly. But that Thorp, Ch. J. said in the same Plea, That if a Manor with *Advowson* appendant be in the Hands of the King by *Escheat* or by *Purchase*, if he at this Day (since the Statute of *Prærogativa Regis*) gives it as entirely as J. S. held it before it came into our Hands by way of *Escheat*, or as J. S. held who enfeoff'd us; in such Case, the *Advowson* shall pass without saying in the Charter *Cum Feodis & Advocationibus*, because the Law in such Case intends, that the King is apprised of his Right. *Quod Curia concessit*.

10. If the King grants a Hundred, which has a *Leet*, to J. N. and another Man has a Manor and a *Leet* in it within the Hundred, if he makes *Hue and Cry* there &c. the said J. N. shall not have the Punishment of it, but it shall be punished in the Eyre. Per Wilby. Br. Grants. pl. 31. cites 21 E. 3. 3, 4.

Contra, where he makes Livery at full Age upon Office upon Suit, there they pass by general Words; but in the other Case, they do not pass without special Words expressed. Note a Diversity. Ibid. — So in *Quare Impedit*, 41 E. 3. 5. Where the King renders the *Temporalities* to a Bishop elect before that he be sworn, Fees and *Advowsons* do not pass without express mention. Ibid. Contra, where he renders them after the Consecration of the Bishop. Ibid.

12. If the King grants *Returna omnium Brevium*, yet the Grantee shall not have Return of *Exchequer Summons*. Br. Patents. pl. 32. cites 22 Aff. 49.

Jenk. 25. pl. 55. cites 26 Aff. 6. S. C. — but it should be (60) as in Br. — Br. Incidents. pl. 11. cites S. C. — 10 Rep. 64. b. Br. *Corody*. pl. 2. cites S. C. & 44 E. 3. 24. — Br. Patents. pl. 8. cites 44 E. 3. 24. & 14 H. 6. 12

13. King H. was seised of the Honour of Pickering, to which a Forest was appendant, and the King granted the Bailwick of it to one in Fee, rendering Rent; and after he gave the Honour *cum Pertinentiis* to E. Earl of Lancaster; and by this the Forest pass'd, but not the Bailwick nor the Rent reserved upon it; for this was severed before from the Honour, and therefore cannot pass as appendant; for it was in Gross before, and does not pass unless by express Words, *Quod nota*. Br. Patents. pl. 35. cites 26 Aff. 60.

14. The King is Founder of a Priory, and confirmed to the Prior all his Possessions, *Tenend. libere & quiete ab omnibus Placitis, Gildis, Tolnetis, Querelis, Actionibus et Demandis, et ab omni Servizio et Exactione Seculari* &c. And notwithstanding those Words, he was charged of *Corody*, *Reasonable Aids*, and to repair Bridges and Causeways; *quod nota*, that the general Words do not bind the King. Br. Patents. pl. 78. cites 50 Aff. 6.

15. In *Trespass*, the Defendant justify'd by Grant of King R. 2. who granted *Bona & Catalla felonum & fugitivorum, & aliorum qui pro aliquo Delicto Vitam vel Membrum amittere debent seu pro aliquo alio Delicto, pro quo bona aut Catalla perdere debent in his Manor of D.* and one was outlaw'd of *Trespass*, and he took his Goods; and the best Opinion was, That he well might, by reason of these Words (*Delicti pro quo perdere debet Catalla sua*). Br. Patents. pl. 36. cites 11 H. 6. 50.

16. A Rectory, to which an *Advowson of a Vicarage* was appendant but the annual Revenues and Profits of them were *concealed, came to the Queen by the Attainder of J. S.* which being found by Office, the *Queen, for a valuable Consideration, ex certa Scientia &c.* granted the Possessions of the Glebe, and Tithes of the Rectory, by special Names, and generally *omnia Hereditamenta &c.* belonging to the same, *not mentioning expressly* the Rectory or *Advowson* of the Vicarage, *adeo plene &c.* as the said J. S. had it, Et prout ad manus ipsius Reginae devenerunt seu devinire debuerunt; with this Proviso, That if the Premises were not concealed &c. Adjudged, that by these Words the Advowson of the Vicarage did pass, and that the Queen was not deceived in her Grant, for want of Knowledge. D. 350. b. pl. 21. Pasch. 18 Eliz. * Anon.

The King had the Advowson of the Vicarage of D. and granted Vicariam suam de D. The Advowson of the Vicarage did not pass. D. 350. b. Marg. pl. 21. cites Mich. 31 adjdg'd.

& 32 El. C. B. Denny v. Afill. — * Bendl 252 Blagrove v. Pierce and Shaw. S. C. cited Per Cur. 10 Rep. 65. b. in Whistler's Case.

17. The Queen seized of the Manor of Gascoigne, and of a Grange called Gascoigne-Grange in D. granted all her Lands, Tenements, and Hereditaments in D. Adjudged by the whole Court, That the Manor did not pass. Godb. 136. pl. 159. Pasch. 28 Eliz. C. B. Giles v. Newton.

18. The Queen having the *Advowson of the Vicarage of D.* granted the Vicarage to B. It was held, that the *Advowson did not pass*; for by her Grant nothing passes but what she intended to pass, and the Vicarage is a different Thing from the Advowson, and every Thing must pass by its proper Name; Nor shall it pass in the Case of a Common Person. Cro. Eliz. 163. Mich. 31 & 32 Eliz. C. B. Anon.

19. The King granted to A. a great Manor, called an Honour, and passed it by Name of an Honour, and well. Jenk. 277. pl. 99. cites Pl. C. 311. The Case of Mines.

20. Jac. 1. granted to Sir R. M. and his Heirs, by Letters Patents, the Territory of Rout, which is Parcel of the County of Antrim, and adjoining to the River of the Banne in ea parte, where there is a *Pischarry of Salmons*; and the Grant was of *omnia Castra, Messuagia, Tota, Molendina, Columbaria, Gardina, Hortos, Pomaria, Terras, Prata, Pasqua, Pasturas, Boscos, Subboscos, Reddit. Reversiones & Servitia, Piscarias, Piscationes, Aquas, Aquarium Cursus &c.* *Ac omnia alia Hereditamenta* in vel intra dict. Territorium de le Rout in Comitatu Antrim exceptis, et ex hac concessione nobis Heredibus et Successoribus nostris, *reservatis tribus partibus Piscationis fluminis de le Banne.* The Chief Judges being of Privy Council, upon View of several Pipe-Rolls, in which this Matter was found severally in Charge as Parcel of the antient Inheritance of the Crown, and upon Consideration had of the said Patent, certified their Opinion and Resolution, That *no Part of this said Pischarry passed by the Letters Patents aforesaid.* It was also resolv'd, That no Part of this Royal Pischarry of the Banne could pass by the Grant of the *Land adjoining*, by general Grant of all Pischaries; for *this Royal Pischarry is not appurtenant to the Land, but it is a Pischarry in Gross*, and Parcel of the Inheritance of the Crown by itself. And lastly it was agreed, That where the King had granted to Sir R. M. all the Territory adjoining to this River, and all Pischaries within this Territory, Exceptis tribus partibus Piscariæ de le Banne, that the fourth Part of this Pischarry shall not pass to him; for the *Grant of the King shall not pass any Thing by Implication.* Dav. Rep. 55. a. to 57. b. Mich. 8 Jac. in Ireland. The Case of the Royal Pischarry of the Banne. — alias Sir Randal Mac Donnell's Case.

21. General Words in a Grant of the King shall not pass such a *special Royalty as belongs to the Crown by Prerogative*; As Mines Royal, Amercements Royal, Escheats Royal, shall not pass by general Words of All Mines, Amercements, and Escheats. Dav. Rep. 57. b. In the Case of the Royal Pischarry of the Banne.

S. P. Dav. Rep. 17. a. Mich. 5 Jac. B. R. in the Case of Customs. — S. P.

Jenk 34. pl. 77. 22. It

22. It was resolved, that by a general Grant of a *Manor* (which had been forfeited to the King by Attainder of Treason) Cum Pertinentiis, and of all his Interest, Claim, and Demand therein, a Writ of Error to reverse a Common Recovery (which had been erroneously suffer'd of the Manor) did not pass, notwithstanding the Clause *De speciali Gratia &c.* For if the King could grant it, it must be by Virtue of his Prerogative, (for no common Person could do it) and then it ought to be by express and precise Words. 3 Rep. 4. b. Trin. 25 Eliz. The Marquess of chester's Case.

23. If the King grants *Ecclesiam*, the *Advowson* passes; For the Intent, and not the precise Words, are to be regarded in the Grant of the King. Per Jones, J. Lat. 248. Hill. 22 Jac. In the Case of Evans and Ascough. — cites 7 E. 3.

24. Sir Francis Fortescue seized of a *Manor* granted it to the E. of Denbigh, except such Lands as were then held for Life by Copy. Afterwards the Inheritance of this Copyhold was granted to the said Earl; The Copyholder dies, the Earl granted again by Copy, and then forfeited all to the King. The King granted the *Manor &c.* and every Part or Parcel, or reputed Parcel thereof. Lord Ch. J. North deliver'd the Opinion of the whole Court, that these Copyhold Lands passed by the Words (Reputed Parcel.) And that in this Case, where the Jury have found the particular Matters, and those Particulars are a solid Ground for a Reputation, the Court shall adjudge it Reputed Parcel, and so shall pass by those Words in the Grant of the King; and Judgment was given accordingly. Freem. Rep. 207. Pasch. 1676. C. B. Lee v. Browne.

See (I. b.)
(K b.) (J. b.)
(Z. b.) (A. c.)
(B. c.) (C. c.)
(E c)

(D. c.) Grant of the King [by general Words; and what passes.]

Br. Forfeiture de Terre. pl. 31. cites S. C. — Br Patents pl. 32. cites S. C. —

Bona Felonum & qualitercunque Damnatorum does not extend to High-Treason, because Felony is named first. Hard 442. cites 11 H. 6. 54 b

* The King granted to the Earl of Arundel and his Heirs, ex gratia speciali, certa Scientia & mero motu omnia Bona & Catalla felonum, & felon' de se, attinct' de proditorie, de felonis, & flagitatorum in eorum possessionem, Honorum suorum, integre tenentium & non integre tenentium, residentium ac & in omnibus redditibus, & Hereditamentis dicti Comitis. The said Earl was seized in Fee of the Hundred of Palling in the County of Sussex. B. held a Tenancy in Fee within the said Hundred of the said Earl, as of his Person; B. was attainted of Treason committed by him in the County of Hereford, and had a Lease for Years and Goods within the said Hundred of Palling, and elsewhere, where the Earl had not any Hereditament. Resolved by all the Judges of England, that the Lord Lumley, who has the Estate of the Earl of Arundel, shall, by Force of the said Patent, have the said Tenancy, Lease, and Goods. The Word (De) shall be construed and relate to any Tenure of the Person, or of any Manor of the Earl; The Word (In) relates to Goods, the Word (De) to Tenancies which are held of the Earl, be the Tenants resident or non-resident. This is a good Precedent to construe Beneficium principis, quod debet esse mansuetum. The Words in a Patent Ex certa scientia, speciali gratia & mero motu, make the Case of the King like the Case of the Grant of one Subject to another; if the King be not evidently deceived. Jenk. 255. pl. 45. — cites 30 Eliz. Lord Lumley's Case.

Br. Patents. pl. 32. cites S. C. — Br. Forfeiture de Terre. pl. 31. cites S. C. —

2. But upon this Grant he shall have the Chattels of his Tenant who is attainted of Petty Treason for killing his Master. 22 Aff. 49. For in Petty Treason the King shall not have the Escheat held of another. Contra, in High Treason.

3. The King by general Words may grant Chattels. 9 D. 6. 28.

Fol 195.

4. If a Man outlaw'd be possess'd of a Term for Years, or of a Ward, and the King grants to another all the Goods and Chattels of him so outlaw'd, the Patentee shall have the Term and the Ward. 9 D. 6. 28.

Br. Patents. pl. 4. cites S. C. Per Babington.

5. If the King grants to another, that he and his Men shall be discharged of Toll, by this he. his Villeins, and also Homagers, shall be quit of Toll; For in doing of Homage, he says, I become your Man. 14 D. 5. 12.

See pl. 7. Br. Patents. pl. 27. cites S. C. Per Tresham, who says,

that if such Grant had been before Time of Memory, his Villeins, and not Homagers, should go quit of Toll by such general Words. But, per Cheyny and June, a Grant by such Words at this Day will discharge Villeins and Homagers.

In Quo Warranto. The King granted to W. N. that he and his Men should be quit of Pentage; This extends only to his Villeins, and not to others. Br. Patents. pl. 103. cites It. Nott. tempore. E. 3.

6. If the King grants to another Bona & Catalla felonum & fugitivorum de hominibus suis. This extends not to the Goods of Homagers; but only to Villeins, unless it had been anciently used to extend to Homagers. 40 Aff. pl. 21. Adjudged.

Br. Patents. pl. 30. cites S. C. —

7. If the King grants Conuance to another of Actions concerning him & homines suos; This shall extend to his Villeins, and not to his Homagers. Dub. 12 Aff. pl. 35.

See pl. 5. Br. Conu. sence. pl. 34. cites S. C. — But, per

Shard, it extends to those who become their Men in doing Homage; Quere, Of those who do Fealty? But Parning was merely contra; and it was said, that in Protection pro se & Hominibus, neither Villeins nor Franktenants shall be aided; therefore it seems there, that it extends only to his familiar Servants. Ibid.

(E. c.) Grant of the King by general Words.

See (I. b) (K. b) (L. b) (Z. b) (A. c) (B. c) (C. c) (D. c)

1. If the King grants certain Liberties to J. S. and inter alia grants to him omnia Bona & Catalla Felonum de se within the Will of S. This shall pass Obligations, Specialties, and Debts due to the Felon; for tho' if the King grant in other Cases omnia Bona & Catalla sua, where it is not granted as a Liberty, Specialties and Debts shall not pass without special Words, being Choses en Action; yet in case of such a Grant of a Liberty, it shall pass such Debts and Specialties; because all Liberties of such Nature have used to pass by such Words in all Ages before; For all ancient Liberties have been granted by such Words, and enjoy'd by Force of them; [and therefore] they shall pass by such Words at this Day, by such Grant of the King. D. 15 Car. upon a Reference out of the Starr Chamber between the Bishop of Winton the Almshouse of the King, and one Harcourt the Lessee of the City of London, to whom such Grant was made by E. 6. of Goods and Chattels Felonum de se in Southmark, to the Judges of B. R. All the said Judges seemed to incline, that it shall pass Specialties and Choses en Action; but they certified for the Generality of the Case, that it was convenient to be tried at the Common Law upon a Suit there.

The King by Letters Patents granted to the Mayor &c of Southampton omnia Bona & Catalla felonum de se; J. S. to whom Money was due on a bond, became felon de se; In an Action by the Mayor upon the bond, it was demurr'd, for that a (Debt) would not

pass by a Grant of omnia Bona & Catalla felonum de se upon which the Plaintiff obtained Leave to discontinue. Sid 142 Paich. 14 Car. 2. Southampton (Mayor) v. Richards — 12 Rep. 1, 2. in case of Ford v. Sheldon. S. P.

The Lord N. has a grant of Bona & Catalla felonum et fugitivorum within the Isle of Ely J. S. dwelling within the Island, was indebted to F. low. H. R. was indebted to J. S. by Obligation conditioned to pay Money at a Time; and the Lord S. who also had Bona Felonum &c. within his Manor. The Question was, which Lord should have the Money. All the Becons of the Exchequer were clear of Opinion, that the Lord S. could not have it; for the Place of Payment nihil Operatur, but the Obligation is the first

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stance which came to the Lord N. within the Isle. But being insisted by Popham, the Queen's Attorney, that the Money belong'd to the Queen, and that the Lord N. could not have it; for that by the general Words of Bona & Catalla felonum *Things in Action do not pass, but by express Words* they will pass; otherwise, not; And therefore Day was given to the Lord N. to shew his Letters Patents. 2 Jac. 36 pl. 51. Trin. 29 Eliz. In the Exchequer. Lord of Northampton v. Lord St. John. — S. C. cited Sid. 142.

The Queen granted to one Catalla Utlagatorum & Felorum de se, within such a Precinct; a *Debt was due to the Queen by a Felo de se* within the Precinct. Resolved, the Queen shall have the Goods to satisfy her Debt. 4 Le. 6. 26 Eliz. In Scacc. Anon.

Br. Patents,
pl. 4. cites
S. C. per Ba-
lington.

2. If the King be seised of a Ward, and grants the Land and Body, with all Reversions and Remainders to another, and after other Land descends to the Ward within Age, the Patentee shall have this Land also. 9 H. 6. 27. b. *Quære this; For the King continues Guardian, and it is to be intended that he was in Ward for Capite Land.*

Br. Patents,
pl. 27. cites
S. C.

3. If the King releases to an Abbot or Prior of his Foundation all Services, and that he shall be as free in the Church as the King in his Crown; Tho' this was an ancient Grant, yet the Corody and Pension due to the King are not discharged by those General Words. 14 H. 6. 11. b.

Br. Patents,
pl. 27. cites
S. C. per
Paston.

4. If the King grants Land to another in Fee, and grants further, that he shall be as free in this Land as the King in his Crown, yet those general Words do not discharge Fines for Alienation, which are due by Prerogative, if he aliens without Licence. 14 H. 6. 12. b.

Br. Garde,
pl. 33. cites
S. C. — Br.
Patents, pl.
20. cites S.
C. — Br. Pre-
rogative, pl.
51. cites S. C.

5. When King E. 3. granted to his Son the Duchy of Cornwall, Cum omnibus ad eam spectantibus similiter cum Wardis, Maritagis &c. & similiter alibi extra Comitatus prædictum Non Obstante Prærogativa Regis, and after a Man who held of the Duke in Chief by Service of Chivalry is dead, and his Heir is in Ward to the King for cause of Ward for other Land; The Duke shall not have the Wardship of him by those General Words; For the King shall not pass such Things as he has in Right of the Crown without express * Mention of his Right. 43 Aff. 15. Adjudged. D. 9. 10. El. 268. 18.

* Fol. 196.

The King granted to the Dutchess of E. Insulam de B & Castrium cum Pertinentiis Habendum &c. simul cum omnibus exitibus, finibus, Amerciamentis, proficuius omnium Gentium, tenentium, re-

6. Exitus, Fines and Amerciaments of B. vel Coram ipso Rege in Cancellaria vel coram Thesaurario & Baronibus Scaccarii vel Coram Justiciariis ad Pacem vel Itinerant. vel ad Gaolam deliberandam vel Justiciariis Forestæ vel Coram Seneschallo & Marischallo Hospitalii Regis vel Clerici Mercator. are never allowed to any in the Exchequer upon a Grant of the King without special Words, or otherwise allowed in a Quo Warranto. D. 10 El. 269. 18.

7. Exitus tenent. vel Fines and Amercements of Constables or other Officers of the King are not allowed in the Exchequer upon a Grant of the King without Words Licet tenent. Vicecom. Coronator. Ballivi Officiarii seu Ministri Regis sunt, because they are royal. D. 10 El. 269. 18. 2 H. 7. 7.

8. non residentium, Advocacionibus, Wardis & Reliviis, Wreckis Maris & aliis de & infra Insulam prædictam in quibuscunque Curis nostris emergentibus, and the Sheriff demanded Allowance upon his Account of certain Issues forfeited in Banco at Westminster, and the best Opinion there was, That he shall not have Allowance of them, nor the Dutchess shall not have them; For those Words, Emergentibus infra Insulam, shall be intended of such Fines &c. which are forfeited in any Court in the Isle, but not of Fines and Amerciaments forfeited at Westminster or elsewhere Extra the Isle; But the Case is not ruled. Br. Patents, pl. 4. cites 9 H. 6. 27. — S. C. cited Arg. Pl. C. 12. where it is said, That it is held, that the Grant was good.

8. If the King has two Titles to a Church, scilicet, the one as Patron of the Fee, and the other by Prerogative by Lapse the Church being void; Tho' the King grants the Fee of the Advowson without express Grant of this present Avoidance to present the Grantee shall not have this Presentment. D. 18 El. 348. 12. 10 H. 6. 9 E. 2.

9. If the King is seised in Fee of an Advowson, and the Church voids, and afterwards he grants the Advowson without speaking of the Avoidance, the Grantee shall have it. D. 9. 10. El. 269. J. B. 33. n. 18 E. 3. 22. 9 E. 3. 26. 3 H. 7. R. 10. cited in D. 10 El. before. Hobart's Reports 189. Contra D. 13 El. 300. 36. where the Grant is of the Manor with the Advowson thereto belonging.

Jenk 241. pl. 25. Contra. — Mo. 249. Mich. 27 Eliz. contra, That the Queen seised of a Manor, to which an

Advowson was appendant, granted the Manor una cum Advocatione, the Church being void, yet the Judgment was, That the Queen should pre'sent Hac vice Sir Thomas Gorge's Case. — 3 Le. 196. S. C. by Name of Sir Thomas Gorge v. Dalton. — S. C. cited accordingly. D. 300. pl. 36. in Marg.

10. B. G. held a Manor of the King, and R. W. held another Manor of that Manor, to which last there was an Advowson appendant; Both these Men were attainted of Treason, and the King seised both their Manors, and afterwards granted the Manor, which B. G. held of him, una cum Advocationibus eidem pertinentibus. Adjudged, That the Advowson did not pass with that Manor, but was still appendant to the other. Nelf. Abr. 904. pl. 5. cites Mich. 30 H. 8. Dyer 44.

This is not the principal Case in Dyer, but is cited there, viz. D. 44. b. pl. 32. That there is a Difference where

the King comes to an Escheat as Lord, and where he comes to it as King of England; For where he comes to it as Lord he shall not be in other Course than as Common Lord, but where as King it is otherwise, and then cites the principal Case as the Case of 6 E. 3. 32. thus, viz. That B. G. holds a Manor of the King to which a Royal Franchise was appendant, viz. to have Escheats of all Treasors of such who held of this Manor, and that R. W. held another Manor of the same Manor to which the Advowson is appendant, and that R. W. was attainted of Treason, by which the King seised, and then granted the Manor held of him una cum Advocationibus eidem pertinentibus. And by the Opinion there the Advowson passed not with this Manor, but is appendant as before; But it was held, that the Franchise Royal by the Escheat was extinct and rejoined to the Crown.

11. If the King grants *Omnia Jura sua Regalia*, or to be as free as Tongue can speak or Heart can think, this shall not be taken according to the Words, but according to the ancient Allowance, As to hold Pleas or to have Consuance &c. Br Patents, pl. 110. cites 10 H. 7. 13.

12. A Patent in Generalibus without Restriction, As if the King grants *Omnes Terras suas*, or *Maneria sua*, or releases all Demands, is a void Patent. Dolus versatur in Generalibus. Jenk. 304. pl. 77. cites 2 H. 7. 11 H. 7.

13. If the King grants *all his Lands and Tenements in D.* this is a good Grant by those General Words. Br. Patents, pl 95. cites 30 H. 8.

14. King Edw. 6. was seised of the Manors of Hackney and Stepney, within which was a great Marsh called Stepney Marsh, Parcel of the Manor of Stepney, which he had in Exchange with the Bishop of London, and also of 20 Acres of Land called Stepney-Marsh, which he had as Parcel of the Possessions of the late Priory of Grace, and granted to the Lord Wentworth and his Heirs the afore-said Manors, *Nec-non Mariscos suos de Stepney præd. Nec-non omnia Terras & Tenementa & Mariscos dictis Maneriis aut cæteris Præmissis pertinent.* &c. The Question was, If the 20 Acres pass in the General Words of the first Nec-non? Or if the Words in the 2d. Nec-non (*dictis Maneriis pertinent.*) restrains the Generality of the first Words? Gawdy, Clench, and Wray conceived, that the 20 Acres did pass; And Wray said, That against express Words no Favour will be given to the King. And it is said, Note, that the Marshes pertaining to the Manor are in the third Clause, Ergo the Marsh in the second Clause shall be intended a Marsh in Gross, or otherwise it should be idle. And afterwards Judgment was given against the Queen. Le. 120. pl. 162. Trin. 3 Eliz. B. R. the Queen v. Lewis and Green.

15. A. being seised of the Manor of Q. and also of the Manor of C. which was held of the Manor of Q. was attainted of Felony. Queen Mary

gave the Manor of Q. to Sir W. M. cum omnibus suis Turris & Parcel-
lis; Adjudged, That the Manor of C. passed by this Grant, because it
was now Parcel of the Manor of Q. Cited by Periam J. 1 Lev. 26. pl.
33. Patch. 27 Eliz. C. B. in Case of Marth and Smith, as Sir Walter
Mildway's Case.

(E. c. 2) Grant. Pass what. By the Words *Constitui-
mus, Concessimus &c.*

Br. Grants,
pl. 62. cites
S. C.

1. **I**N Affise, upon a Grant of the Office of Clerk of the Crown in Chancery,
it need not be shewn if there was such Office at the time of the
Grant or not: For per Catesby, the King by this Word *Concessimus*
may grant an Office which had Effe before, but by these Words *Constitu-
imus & Ordinavimus* he may make an Office and Officer which had not
Effe before, and the Office of one of the Clerks of the Crown in Chancery
was granted to two, where, per Catesby, two cannot have the Office of
one Clerk; Contra of Grant of the Office of Clerk of the Crown to two, and
yet non allocatur, but the Grant is good. Br. Patents, pl. 21. cites 9 E.
4. 11.

2 The King having granted to Hugh Moyle the Office of Broker of
London, by the Word *Concessimus* to the H. M. Office of Brocar. &c.
And by all the Serjeants the Patent is void, because it wants *Constitu-
imus*; because the King never had granted such Office there before. And per
Brian the Patent is void; For this Office does not belong to the King.
By which he granted another Patent, which had *Constituimus & Ordina-
mus* &c. And yet held void, because there was never such an Office &c.
But the Mayor admitted him. Br. Patents. pl. 73. cites 21 E. 4. 76.

(E. c. 3) By the Words **Ex Certa Scientia*, †*Mero Motu* &c.

**Ex certa Sci-
entia imports,*
That the
King has
Knowledge
of the Thing
which he
grants; and

therefore such Charter is called Assertive and not Suggestive, as is said in 2 E. 3. 7. but this is to be
intended of Verity, which is the proper Object of Science, and not of Falsity, which is a Non-Ens,
and thereof the King cannot have Knowledge; But in such Case notwithstanding those Words
the King is utterly deceived in his Grant, and therefore they shall not give the Patentee any Advan-
tage. 1 Rep. 112. b. Resolved Mich. 10. Jac. C. B. Legat's Case. — S. P. Arg. 3 Le. 249, in the
Case of Harris v. Wing. — S. P. Pl. C. 502. b. Mich. 18 & 19 Eliz. in the Case of Grendon v. the
Bishop of Lincoln.

† *Mero Motu* properly imports the Honour and Bounty of the King, who rewards the Patentee for
the Merit of his Service of the mere Motion of the King himself, without any Suit of the Party; and
it was said, That those Words were added after the Statute of 4 H. 4 cap. 4 by which the King declared,
that he would abstain from granting any Part of his Revenues, Lands or Wardships, but to such as desired
them, and those who sue for any such Thing shall be punished, and shall not have the Thing for which the Suit
was made; After which Act, to the End that it should not appear, that any Suit was made, those
Words were added, viz. *ex Mero Motu*. 10 Rep. 112. b. 113. a. in Legat's Case. — S. P. Arg. 3 Le.
249. in the Case of Harris v. Wing.

3. If the King has a Mine Royal in the Land of J. S. and he *Ex
gratia speciali, certa Scientia & Mero Motu* suis, grants to a Stranger

all Mines, which he has in the Land of *J. S.* by this Grant the Mine Royal shall pass; For otherwise the Words shall be void; For he cannot have bale Mines in another's Soil, and therefore when he says *Ex certa Scientia*, and recites, That it is in the Soil of another, he cannot be taken Misconfant of the Thing, and therefore it shall pass. Per Dyer Ch. J. of C. B. Pl. C. 337. Hill. 9 Eliz. in the Case of Mines.

4. The Words *Ad Humilem Petitionem* diminish the Force of the Words *de Gratia specialia*, ac *Ex certa Scientia et Mero Motu*; For the Charter shall not be taken to proceed from the Grace of the King merely, and so to be taken more strong against the King, and in Favour of the Patentee, unless it is merely of the Motion of the King, and without Suit of the Party. Per Catlin Ch. J. Pl. C. 337. in the Case of Mines.

5. *Queen Mary* being seised in Fee, in the Right of her Crown, of a Manor, to which an Advowson was appendant; and *the Church being then void*, she, in the Time of the Vacancy, *ex certa Scientia granted the Manor & omnes Advocaciones eidem Manerio pertinent.* five incurrent. in tam amplis modo & forma prout &c. but no Mention was made of the present Avoidance, which was at that very Time when the Grant was made; It was adjudged, that the next Presentation did not pass by such a Grant. Dyer 300. pl. 36. Pasch. 13. Eliz. The Case of the Manor of Bedminster.

Ibid. Mag. says, it seems by this Case, that the Grantee shall not have the the present Avoidance, contra to F.N. B. 33. & 18 E. 3. 22. 9 E. 3. 22.

Dier 269. And this Judgment is good Law, per Car. Mich. 29 & 30. Eliz. C. B. & Dier. fol. 243 [and where] A had a Manor to which Advowson is appendant, which is void, he grants the Manor *Una cum Advocacione* to B. In this Case B shall not present *Hac Vice*. Pasch. 23 Eliz. *Sir Tho. Gorges's Case*, in a Case of the King, And Trin. 15 Jac. *Durheemb's Case* being the Case of Common Person.

6. Grant to *J. H. Son of T. H.* *Ex certa Scientia, et Mero Motu.* *J. H. was a Bastard.* The Grant shall not be taken in such Plight as the Grant of a Common Person, void for Uncertainty, because the King takes notice of the Person of what Degree he is; And in the King's Case where he takes Knowledge by the Words *Ex certa Scientia*, there all Matter of *Uncertainty shall be avoided, and made good; but not Matter which is not true; And where a Thing may be taken two Ways, there without the Words *Ex certa Scientia* &c. the best shall be taken for the King, and the strongest against the Patentee per Manwood; But per Dyer by the Words *Ex certa Scientia*, the Uncertainty is saved, and shall be taken strong for the Patentee; And if it can be any ways taken for him, the Patent shall not be void; And here the Word (Son) may be taken either for a Base, or a True Son. But where the King in his Grant † recites a Thing which is false, that shall not make the Patent good, altho' the Words be *Ex certa Scientia* & *Mero Motu*. 3 Le. 49. pl. 69. Mich. 15 Eliz. in C. B. Anon.

*S. P. Per Per Manwood Ch. B. As the Uncertainty of the Vill, or when the Patent has different Meaning, and is Enuncutory.

Sav. 5. pl. 14. The Words (Ex Mero Motu, et certa Scientia) by which the

King says, (I grant it without the Suit of or Information of any Person, but of my own Knowledge,) and all Uncertainties; as if he grants Lands which belonged to the late Dissolved Monastery of *Clump Church* when in fact there were several Monasteries of *Clump Church*, this is no fault; But such Patent shall never aid a Fault; As if the King grants Lands which came to him by the Dissolution of a Monastery, when in fact they came to him by the Attainder of Cardinal Wolsey. Per Car. Sav. 37, 38. pl. 36. Mich. 24 & 25 Eliz. in Scacc. Attorney-General v. May.

† S. P. per Holt, Ch. J. 2 Salk. 561. Hill. 9 W. 3. in the Case of the King v. the Bishop of Chester.

7. By Attainder of one Dissolved, a Right to certain Land became forfeited to the Queen, who, after the Death of the Dissolved, by Letters Patents *De Speciali Gratia, Ex certa Scientia, & Mero Motu, granted all the Lands, Tenements, Rights, and Hereditaments, which she had by Attainder of the Dissolved*; But it was adjudged, that such a Naked Right shall not pass by such general Words of the King; For that (if it can be granted at all) it must be with a special Recital by express and special Words. 3 Rep. 4. b. cited, and affirmed by the Court to be good Law, by the Name of Cromer's Case.

S. C. cited Hob. 243 in the Case of Lord Stanhope v. Bishop of Lincoln.

S. P. Arg. 3.
I. c. 249 in
the Case of
Harris v.
Wing.

9. *Ex Gratia sua Speciali*, is in respect of the Grace and Favour which the King has conceived in respect of the Patentee. 10 Rep. 113. a. in Legat's Case.

(F. c.) Grants of the King. In what Cases they shall be void for Uncertainty.

Cr. J. 421.
S. C. by the
Name of
Lightfoot v.
Lener Ad-
judged, That
the Grant
is uncer-
tain and
void; and
the averring
Payment at
Borrow-
brigg, without averring Payment at Willow-brigg is therefore ill; And for that Reason it was awarded that he should answer.

1. IF there are two Brigs in Yorkshire, scilicet, Willowbrig and Borrowbrig, and the King grants to a Man, That he shall take so much for every Beast which shall go over Willowbrig for Toll, as has usually been taken for every Beast which should go there et alibi inira Regnum Angliæ; Tho' he avers, that so much in certain has been paid at Borrowbrig aforesaid, and so much he claims to have, yet this Grant is void for the Uncertainty of the Words (Et alibi intra Regnum Angliæ) For this has not any Certainty: For one Place may be 2 d. and at another Place more or less. P. 15. Ja. B. R. *Lightfoot and Lovett. Adjudged.*

2. If the King grants to me that I shall not be Sheriff, this is not good for the Uncertainty, because he does not say of what County; But contra, if he says that I shall not be Sheriff of any County in England. Note the Diversity. Br Patents. pl. 92. cites 2 R. 3. 7. Per Husley.

So if the
King has 20
Acres of Land
in D. and he
grants to J. S.
20 Acres of the
Lands in D.
without any
describing
them by the
Rent, Occu-
pation or
Name &c

3. The Queen seized of a Great Waste, called Ruddledown, in the Parish of Chipnam, granted a Moiety of a Yard Land in the said Waste to the Mayor and Burgeses of Chipnam, without any Certainty, Name, or Description, and after granted the Waste to H. Adjudged, That the Grant was void for the Uncertainty of the Thing granted, it being in the Case of the King, though otherwise it would be in the Case of a Common Person, where the Grantee might by Election reduce it to a Certainty; And the Court held farther, That the Grant was void, not only against the Queen herself, but also against H. her Patentee. Lc. 30. pl. 36. Trin. 27 Eliz. B. R. Sir Walter Hungerford's Case.

This Grant is void, and the Patentee shall not have his Election in the King's Case. 12 Rep. 86 in Stockdale's Case.

4. If the King grants a Rent or Land without Limitation of any Estate, the Grant is merely void for the Uncertainty, and the Grantee shall not be Tenant at Will to the King, as it is ruled in *Alton Wood's Case*. And the Reason is, Because the Grant of the King shall be taken most strong for his Benefit and Advantage. Resolved. Dav. Rep. 45. a. Patch. 5 Jac. B. R. in Ireland, in the Case of the Dean and Chapter of Fernes.

But if the
Thing grant-
ed be such of
which divers
Estates can't
be limited,
but one Estate
only is incident

5. If the Thing granted be of such a Nature that diverse Estates may be limited thereof; As of Land, Seignory, Rent &c. If the King, in his Grant of such a Thing does not limit any certain Estate to the Grantee, nothing shall pass by this Grant, but it shall be adjudged merely void for the Uncertainty. Resolved. Dav. Rep. 45. a. in Case of the Dean and Chapter of Fernes.

thereto, which the Law limits without any Limitation made by the Grantor, of such Thing the Grant of the King cannot be doubtful or uncertain, nor can the King be deceived nor can he err; For Error est in Bivio, and no Error can be where there is only one Way to be taken. Resolved. Dav. Rep. 45. in the Case of the Dean and Chapter of Fernes.

6. *Certainty* is requisite in the Grants of the King. Per Fleming Ch. J. Bull. 10 Hill. 7 Jac. in the Case of the Earl of Shrewsbury v. Earl of Rutland.

7. King James granted to W. S. *so many Debts, Duties, Arrearages and Sums of Money, being on Record in any of his Courts from the 1st Year of H. 8. to the 14th of Queen Eliz. as shall amount to 1000 l.* It was resolved, That this Grant was void; for there is no Certainty what Debt should pass. And that the Word (Arrearages) being coupled with the Words (Debts, Duties, and Sums of Money) should *not pass Arrearages of Rents, or Things Real*, but must be intended of Things Personal; but there being a Proviso that the Grantee should take no Benefit of any Arrearages of Rents, Reliefs, Tenths, or annual Payments whatsoever, till J. S. should be satisfied the Sum of 10000 l. this explains what Arrearages were intended, viz. of Rents &c. and so one Part of the Patent must be construed by the other; but clearly Mesne Rates are not within the said Words; for they are the Profits of Demesne Lands. 12 Rep. 86. Trin. 9 Jac. in the Court of Wards. Stockdale's Case.

8. In Ejectment, the Case upon the Evidence in a Trial at Bar was, *2 Jo. 1-6. S. C. by Name of* that Eleanor Queen Dowager of H. 3. in the Year 1273. *founded St. Katharine's Hospital, reserving to her self during her Life & Reginis Angliæ nobis succedentibus the Nomination of the Master of the Hospital, which* Lord Brun- was incorporated, and the Grants confirmed by Letters Patents. And ker v. Sir the *Question was, Whether by those Words (Reginis Angliæ) the Queen* R. Atkins.— Dowager or Queen Consort was intended? And it was held, that the Skin. 2. 14. S. C. Queen Dowager had the Right to nominate; for Queen Eleanor, at the Time of Foundation, was only Dowager, and therefore could never be intended to exclude such Queens as should succeed her in that Capacity. And the Words will include a Queen Dowager; for she is Queen of England, and as such may sue in the Exchequer. 1 Vent. 149. Mich. 23 Car. 2. The Case of St. Katharine's Hospital.

(F. c. 2) Grants. Enure. How.

1. **T**HE *Affise* had usually been held in *Tork-Castle*, and Queen Eliz. granted the Custody of the Castle to J. S. *with all the Herbage* in the Castle. Upon demanding the Opinion of the Master of the Rolls, the Ch. J. of B. R. and the Lord Ch. Baron, they held that the Affises might be held there, whether the Patentee would assent to it, or not; for if he might prevent it, so might every one, and so the Business for the Publick Good would be unexecuted, which would be very inconvenient, and would be in Effect the barring the Queen herself from coming into the Castle, it being her Service which is there to be executed, and the Seat of Justice her Seat, for which the Common Law with their Commission gives Authority to the Justices to appoint the Place of their Sessions. 1 And. 345. pl. 320.

2. Where the Words *Damus & Concedimus* in the King's Grant cannot enure by Way of Grant, but may by Way of Confirmation, there they shall enure by Way of Confirmation; so that a Forfeiture, before Office found of the Forfeiture, is discharged by these Words; and tho' they are void as to amounting to any Grant, yet they confirm the Estate of the Patentee. Mich. 7 Jac. 8 Rep. 167. in the Earl of Cumberland's Case.

Cited per Holt Ch. J. Skin. 661. in Case of the King v. Bishop of Chester, (alias Sir W. Puckard's Case)

3. Holt Ch. J. cites it as said by his Brother Turton, that the *King's Intention* is a qualified Intention, viz. according to the Letters Patents,

but Holt said that a *legal Intention is not necessary* in the King, *but only a moral Intent*. Skin. 661. Mich. 8 W. 3. B. R. in Case of King v. Bishop of Chester. (Sir William Theekitone's Case.)

See (O. c.) (G. c.) In what Cases it shall *enure to a double Intent*.

Br. Patents, 119. cites S. C. that he may make such Officers after; and so well ——— If the King grants *Consuance of Pleas* to one N. and does not say before whom it shall be held, the Grant is void; for the Grantee cannot make a Judge; but if he had Court before, there the Grant is good. Br. Patents, pl. 44. cites 2 H. 7. 13.

2. If the King grants to a Spiritual Corporation to hold such Church in proper Use for ever, where the King himself is seised of the Advowson of the said Church at the Time; this shall not enure first to a Grant of the Church, and then to an Appropriation: But the King is deceived, and therefore the Grant void. 17 E. 3. 39.

Sty. 266. to 273. S. C. and the Judges concurred in Opinion that the Copyhold is not destroy'd.

* Fol 197.

Mar. 206. Pasch 18. Car. B. R. Fulham v. Fulham, the Ch. J. Bramstone, and all the Court said, it never was recited in any of the King's Grants what is Copyhold; and they were clear of Opinion that the Grant was not void; but whether it destroyed the Copyhold, so as the King could not afterwards grant the

3. If the King be seised of a Manor, whereof a Copyhold Tenement in Fee is Parcel, and the King grants the Copyhold Tenement to J. S. for his Life, by his Letters Patents, tho' this be a good Grant, because the King is not bound to recite such Copyhold Estates, they not being of Record, yet after the Death of J. S. the King may grant it by Copy* again; for this doth not extinguish the Copyhold, because the Grant of the King shall not enure to a double Intent, especially to such collateral Intent; and it would be of dangerous Consequence to the Conveyance made by the King to the Subject, if the King once make a Lease for Life or Years of a Copyhold, that this should destroy the Copyhold for ever. If a Bishop Tenant in Tail, for Life or Years, lease a Copyhold, yet this shall not bind the Successor Issue in Tail, or him in Reversion, to grant it by Copy, nor shall bind an Infant Lord of a Manor; and the Estate and Possessions of the King are in like Manner under the Protection of the Law, in respect of the great Affairs of the King; and peradventure it may be a Prejudice to the King to extinguish the Copyhold by an Act in Law, by Way of Consequence, without open Intent of the King; for perhaps a common Appendant or Appurtenant to the Copyhold will be lost, if the Copyhold be extinguished. D. 1651. between *Cremier and Burnet* adjudged upon a Demurrer; per totam Curiam, after diverse Arguments at Bar. Intratur. D. 1650. R. 414.

4. In the Case aforesaid, if the King after the Death of the Tenant for Life grants over the Manor to J. D. in Fee, the Grantee may grant it by Copy, as well as the King might, if he had not granted it over; for by the Death of the Tenant for Life, it is reduced to the same Condition as it was before the making of the Lease for Life. In the said Case of *Cremier and Burnet* adjudged per totam Curiam; for the Grantee of the Manor doth not communicate of the Prerogative of the King, but has the Manor in the same manner as it was in the King at the Time of the Grant made to him.

same by Copy again, they agreed might be a Question. — But Jo. 449. See v. Brothby, which seems to be the S. C. with this of *Cremier v. Burnet*, reports that it was agreed by Barkley, Crooke and Jones, that this Grant (which was of a Copyhold escheated to the King, is an Extinguishment of the Copyhold; so that it is not again grantable by Copy, either by the King or his Grantee of the Manor; after this Estate for Life shall be determined; and that Bramstone was of the same Opinion — Roll. Copyhold, 111. accordingly. Mich. 15 Car. B. R. *Downhast v. Gomers*, resolved per Curiam upon

upon Evidence at the Bar.—Sid. 17. 35. 81. 137. S. C. by the Name of *Field v. Boothby*; and there it was held by Glyn Ch. J. and Warberton J. against Newdigate J. that the Power of granting again by Copy was not destroyed.—Keb. 720. Patch. 16 Car. 2. B. R. *Lee v. Boothby*, says that a Grant for Life by the King, is only a Severance of the Copyhold pro tempore.

5. Letters Patents of the King shall not enure to two Intents; as where *Land or Office is granted to an Alien born*, this does not make him a Denizen. Br. Patents, pl. 62. cites 7 E. 4. 30. per Cur. S. C. cited as *Baggot's* Case. 3 Le. 243. Mich. 32 Eliz. in

Case of *Harris v. Wing*.—S. P. 5 Rep. 56. a. in Knight's Case, cites 17 E. 3. 39.—S. C. cited Roll R. 466. Mich. 4 Jac. in Case of *Colt v. Glover*.—S. P. By Dyer Pl. C. 501. Mich. 18 & 19 Eliz. in Case of *Grendon v. the Bishop of Lincoln*, cites 9 E. 4. 6. 11. — Nor where the King gives *Land to a Felon*, this shall not pardon him of the Felony; for it ought to have special Words in the one Case and the other. Br. Patents, pl. 62. cites 7 E. 4. 30. per Cur.—S. C. cited Roll R. 466. Mich. 14 Jac. in Case of *Colt v. Glover*.—So if the King grants Lands to J. S. and his Heirs, and in Truth J. S. is the King's Vilein, this does not infrachise the Vilein by Implication. 5 Rep. 56. a. Mich. 30 & 31. Eliz. C. B. in Knight's Case.

6. If the King grants the Office of Steward or Constable of the Castle of D. where there is no such Office before, the Grant is void; and therefore the best shall be taken for the King; and if the King will make such Office, it ought to have this Word *Constituimus* &c. Br. Patents, pl. 63. cites 8 E. 4. 6. Per Choke.

7. The King granted the Office of one of the Chamberlains of the Exchequer to H. C. and the Heirs Male of his Body, to be exercised by him or his sufficient Deputy; and after the Patentee granted it to J. L. for his Life; and after the King confirmed it, and granted thereby the same Office to J. L. for his Life; and after H. C. had Issue, and died, and the Issue died without Issue; and the King granted the Office to another, and J. L. made Debate; and it was held clearly, that of such Offices as are granted by the King to one upon Trust and Confidence, as an Esquire for his Body, the Grantee can't make an Assignment, if there be no Assignment in the Grant, as here, to him and his Assigns, but of the Office of Parker, he may make an Assignment; and if the Patent had not been by him and his Deputy &c. he could not have made a Deputy. And it was mov'd, that tho' the Grant to J. L. is void against the Issue in Tail, yet 'tis good against the King, by Reason of the Confirmation of the King. Contrary per Billing; for by him, if the King does not recite the first Grant, and grants the Office to J. L. *Habendum after the Death of the first Grantee* for Life of the second Grantee, 'tis not good; for the King has not the Office to grant during the Life of the first Grantee. Br. Grants, pl. 99. cites 49 H. 6. 14. and 11 E. 4. 1. Br. Office and Officers, pl. 28. cites S. C.

8. The King granted to W. N. by his Letters Patents, that he may give 10 l. Rent to a Chaplain to celebrate Divine Service in B. pro bono Stat. *A. & antibus* &c. *juxta Ordinationem ipsius W. N. fieri*. Rede said this is a good Grant, notwithstanding that the Chaplain be not named, as where the King grants to them of N. such Liberties as those of London have, this is a good Grant. But Fineux and Keeble held the principal Grant void; for Grant of the King cannot enure to two Intents; that is to say, to grant Licence, and to make a Corporation. Br. Patents, pl. 44. cites 2 H. 7. 13. Brooke says, I see that several such Grants are, that is to say, where the King makes J. N. a Duke, and grants to him Land by the same Pa-

tent, and by the same Name. Ibid.—So to make a Mayor and Commonalty, and to give Land to them by the same Patent, or Licence to purchase which is common &c. Ibid.—But if the King grants to J. N. to avowise certain Land, yet if he gives Land held of the King in Capite in Mortmain, the Land shall be taxed for Fine for the Alienation, and therefore it is used to put in such Patents now, tho' it be held of us in Capite. Per Keeble. Ibid.

9. It was held by the Justices, that if the King grants Land to a Corporation by another Name than that by which they were named before, yet the Land shall pass, and the Letters Patents shall be to them as a new Incorporation &c. 3 Le. 190. Mich. 20 Eliz. C. B. Dean and Chapter of Christ-Church v. Parot.

S. P. per
Dyer and
Brown. Ibid.
247. in S. C.
who said.
That the

Rule is true where both Intents enure and work against the King. But where one Intent serves for, and works for the Benefit of the King it is otherwise.

The King's Grant shall not enure (to his special Prejudice) to two Intents, viz. to a *Demise* of the Land, and also to a *Sufferſion* of his Condition by which he may defeat the Estate for Life, and other Estates, as it should be in the Case of a common Person; or to a Demise in respect of his present Estate *pur auter Vie*, and also to a Confirmation of his Condition by which otherwise he might defeat all, as it should be also in the Case of a common Person; For the Grant of the King shall be taken according to his express Intention comprehended in his Grant, and shall not extend to any other Thing by Construction or Implication which does not appear by his Grant, and therefore in such Cases the King ought to be truly informed, and he ought to make special and particular Grant, which by express Words may enure to all such several Intents as are desired. 7 Rep. 14. a. Mich. 33 & 34 Eliz. in *Englefield's Case*.

S. P. per Ld. 11. If the King's Grant may be taken to a double Intent, it shall be
Dyer. Pl. C. adjudged *void for the Doubtfulness* thereof. Resolv'd. Dav. Rep. 45. a.
502 b. Mich. Pasch. 5 Jac. B. R. in Ireland, in the Dean and Chapter of *Ferne's*
18 & 19 Eliz. in *Case Case*.
of *Grendon*
v. the Bishop of Lincoln. — S. P. per Williams J. Bull. 4. Hill. 7 Jac. in *Case of the Earl of*
Shrewsbury v. the Earl of Rutland.

12. When the King *has two Rights* in him, he cannot exclude himself of both without special Words; as *Advowson* held of the King is alien'd to an Abbot, now the King has Title to the *Advowson* by the *Mortmain*, and after the King by his Letters Patents grants to the Abbot that he may hold the *Advowson* to his own Use, yet the King shall not lose Advantage of the *Mortmain*. 7 Rep. 14. b. Trin. 6 Jac. in *Calvin's Case*.

See (Y. a. 2) (H. c) *How* it may be *without Grantee*. [Or where it
pl. 18. must be *by way of Ordinance*.]

If the King grants *Lahd* in Fee Farm in *Fee Farm* *Probus Hominibus de Dale*, it was held to be a good Corporation. And so where it is given *Burgensibus*, *Civibus & Communitati*, and they by such Names of Corporations may have Actions of Things touching their Farm &c. and the Writ shall be *Ad respondend. Hominibus Villæ de Dale, vel Civibus &c.* 7 E. 4. 14. a. pl. 7. — * Orig. is, (Et pur ceo icy est bon come la pur Necessity.)

1. The King may grant generally without Mention of any to whom he makes Grant, that the Men of such a Vill shall be a Corporation, as he may say *Constituimus* the Men of such a Vill to be a Corporation, scilicet, Mayor and Comminalty, or such like; For he cannot grant the Corporation to the Men in their natural Capacity, and they are not a politick Capacity before the Grant, and so the Grant to them would be to no Purpose, * and therefore it is good here as there for Necessity.

2. The King may grant to J. S. that his Tenants shall be a Corporation naming the Corporation in certain; For this is an Creating of a Corporation as well as in the other Case. 20 E. 3. *Conscience de Pleas* 46. Admitted.

3. The King by his Letters Patents may ordain, that from a Vill which is not incorporated shall come Burgeses to the Parliament to be elected by the Inhabitants of the Vill; For this is the Case of several Vills and Burrows in England who have Burgeses by Description that never were incorporate, and there this Liberty could not com-

Commence by Grant to any but by way of Ordinance. Hobart's Reports 22. Case of Burgesles of Parliament.

4. The King may erect a Fair, Market, Warren, Park, Forest, Chale, Piscary, or such like, by way of Ordinance, without Grant of it to any. Hobart's Reports, 22.

5. If Letters Patents are made in this Manner, Statuimus, Ordinamus & Declaramus per presentes, that the Vill of B. shall be perpetually a free Borough, and that within the said Borough shall be a Body incorporate by the Name of Provost, Free Burgesles of the Borough, and Commonalty of B. and by this Name may sue and be sued, purchase, and alien &c. and then follows this Clause, Et quod ipsi prælati Præpositi & liberi Burgesles * prædicti & successores sui in perpetuum habeant plenam Potestatem & Auctoritatem eligendi, mittendi & returnandi duos discretos & idoneos viros ad serviendum & attendendum in quolibet Parlamento in Regno Hiberniæ in Posterum tenendo. Tho' this Liberty is not granted to any, yet it is good by way of Ordinance, and this Liberty is good by way of Interest in all the Corporation, though the Execution of it be committed to the Provost and Burgesles only. Hob. R. Case of Parliament 22.

S. C. cited Comb. 316. Hill. 6 W. 3. B. R. in Case of the King v. Larwood.

* Fol. 198.

* (7) 6. So the King may grant a Privilege to a Corporation by way of Interest, and commit the Execution of it to any Persons who are not Members of the Corporation. Hobart's Reports, 22.

* This Plea in Roll is marked (7) but it should have been (6)

7. Vaughan held, That the King may dispense with a Corporation; and he said, It was very usual to Licence them to purchase in Mortmain, to make Parks, to convert Arable into Pasture, or Wood into Arable, to erect a Fair, to appropriate a Rectory &c. Freem. Rep. 139, Hill. 1673. in Case of Thomas v. Sorrel.

(I. c) At what Time he may Grant.

1. **T**HAT which is an Inheritance in the King at the time of the Grant, will well pass by the Grant.

2. As if the King grants to the Tenant, that when he dies his Heir shall enter without suing of Livery, this is good. 19 D. 6. 62.

3. The King may grant to another all Recognizances which shall be made in the Chancery hereafter; Because this is the Profit of the Court. 19 D. 6. 64.

4. The King may grant Wards and Marriages to such a Value which shall happen till such a Day, paying &c. 34 E. 1. Rot. Fin. Memb. 15.

5. The King may grant the Ward of &c. quando acciderit. 29 E. 1. See (I. c. 2) pl. 1. Rot. Fin. Memb. 14.

6. The King may discharge such Thing as shall be, which is not in him at the Time of the Discharge.

S. P. Br. Patents, pl. 53. cites 6 H. 7. 4.

7. As he may grant to a spiritual Man, that he shall be discharged of Tenths when they shall be granted by the Clergy. 9 D. 6. 62.

S. P. Br. Patents, pl. 53. cites 6 H. 7.

4. For this sounds in Covenant, and against the King no Writ of Covenant lies; and therefore the Grant is good.

8. * So the King [may] grant to another, that he shall not be impeached of a Recognizance, if he enters into it afterwards. 19 D. 6. 64.

* Orig. is (Si)

9. The King by Patent, reciting that H. B. held of him in Chief, granted to T. T. that if H. died his Heir within Age, that he shall have the Ward of his Heir and Heirs &c. which was argued in the Exchequer Chamber. Choke said the Grant is good; for the King has an Interest

But in Case of a common Person, it is not a good Grant; for

of this he may have *Writ of Covenant*, and by Consequence against the King, by Way of Answer; but Grant of the King, that where A. is indicted of Felony, if

he be after outlawed of it, the Grantee shall have all the Forfeiture &c. † [is good] Ibid.——— So the King may grant the *Temporalities of a Bishop before they fall*; Per *Laicon*. But it was said that there is but a little Diversity between this and the principal Case. Ibid.——— *So of Fines and Amercements, and Defaults of Felons and Fugitives*, the King is seized in Law; and therefore his Grant thereof is good; but contra here; Per *Vampage*. Ibid.——— *For if the King grants the Escheat of his Tenant when it shall fall*. Or the Land which his *Villain* shall purchase; this is not good. Ibid.——— † *Fitzh. Grant*, pl. 91. * See (H. b)

The King's Grant of the *Temporalities of a Bishop in the Life-time of the Bishop, or of the Wardship of an Heir in the Life-time of his Ancestor*, who is the King's Tenant, or of *Fifteenths or Tenths, before they are given* by Parliament to the King, are good; for the Law understands these to be near *Possibilities*. The Parliament is supposed to be held every Year, and the King in Parliament generally has Aid of his Subjects; and *Statuum est omnibus semel mori*; and therefore the Grant of the Wardship, *Temporalities* and *Fifteenths*, as aforesaid, is good: But the Grant of an *Escheat*, or of a *Purchase made by Villain*, or of the *Forfeiture of the Land of an Offender before his Attainder*, are all void; for they are remote Possibilities, and out of the Expectation of the Law. *Jenk.* 210. pl. 44.

* Orig. is (26) but misprinted.

10. Note, per *Choke* and *Catesby*, Where the King writes to have B. admitted to a *Corody* for his Life, in the Abby of B. who is admitted, the King cannot write in the Life of B. to have N. admitted to such a *Corody* in the Life of B. after the Death of B. For the King has only a Presentation, and he can't present in the Life of B. who is only an Incumbent in *Eilect* in this Case. *Br. Patents*, pl. 30. cites * 39 H. 6. 48.

11. Contra per *Laicon*, That the King may grant Office for Term of Life; and by another Patent he may recite the first Grant, and grant it to another after the Death of the first; and well; but it seems that he can't grant it by Name of a Reversion; for there is no Reversion of an Office; for it is determined after the Death of the Grantee; but he may grant it by Name of Office *Habend'* after the Death of the first Patentee. Ibid.

And it was held that the Grant is good before the Act done, because it is a Thing which turns in *Pannam Pecuniariam*. Ibid.——— But voluntary Escape cannot be pardoned before the Act done; note the Diversity. And the Reason is, because negligent Escape is only Money to the King, which he may pardon before the Act done. Ibid.——— But such Grant cannot be intended of Voluntary Escapes. *F. N. B.* (229) (B) a. 524. in *Notis*.

12. In Escape out of the Prison of the Bishop of S. by Negligence, the Bishop shewed ancient Grant allowed in *Quo Warranto*, where the King had granted to his Predecessors that he should be quit of Escapes of *Therres and Felons*, and of Escape of Prisoners out of his Prison. And all the Justices held it good, because it was allowed in Eyre; for this is Judgment final in this Point. *Br. Patents*, pl. 51. cites 3 H. 7. 15.

S. C. cited 11 Rep. 12. in Case of *Whipple* v. *Whapper*; and lays that this Question is here well explained and resolved.

13. Note where the Statute of 31 H. 8. gives to the King the Possessions of Abbeys, and all Rights, Entries, Actions, Conditions &c. which the Abbots might have had; and that he shall be in Possession without Office; and that he shall be adjudged in actual and real Possession of those in such Plight and Sort as they were at the Time of the making of that Statute, yet if an Abbot was possessed of four Acres of Land, the King cannot grant it over before Entry made by him into it, because it is a *Chose in Action Real*, and not like to a *Chose in Action Personal*, or *Mixt*, as Debt, Ward &c. by some; and by some Contra, by Reason of those Words, that the King shall be in Possession; but this seems to be that he shall be in such Possession as the Abbot was, viz. of the Thing whereof the Abbot had Possession, the King has by this Actual Possession; and of such whereof the

Abbot

Abbot had only Cause of Entry, or Right in Action, of those the King shall be vested of a Title of Entry, or Title of Action; but the Thing to which he has such Cause of Entry or Action, is not by this in him in Possession; and therefore *cannot pass* from the King *by general Words*. Quære if the King *recites the Disseisin*, and how the Right and Action is * given thereof to him by the Statute, and *grants it specially*, it seems that this is good. Br. Chose in Action, pl. 14. cites 33 H. 8.

14. If a Man be accused or indicted of Treason or Felony, his Lands and Goods *cannot be granted* to any, no, not so much as by Promise, nor any of his Lands or Goods seized into the King's Hands *before Attainder*; for when a Subject obtains a Promise of the Forfeiture, many Times undue Means and more violent Prosecution is used, than the quiet and just Proceeding of the Law would permit, and the Party ought to live upon his own until Attainder. 2 Inst. 48.

15. The King granted the Office of Searcher in the Port of P. to J. M. (without granting it to him for Life; so that he had only an Estate at Will;) and afterwards reciting this Grant, granted to Kemp for his Life the same Office, *from and after the Death, Surrender or Forfeiture of* M. This was adjudged a good Grant. 12 Mod. 77. Trin. 7 W. & M. the King v. Kemp.

* Orig. in all the Editions is (bon.) but should be (done)

2 Salk 465.
S. C. 4 Mod.
2-6. S. C.—
Carth 350.
S. C.—
Comb 334.
S. C.

(I. c. 2) Grant of the King *in futuro*. Good, and when it shall take Effect.

1. GRANT of the next Ward &c. is good; for it sounds in Covenant &c. Br. Patents, pl. 53. cites 6 H. 7. 4.

2. Grant of an Office, reciting the first Grant, and to take Effect after the first Grant determined, is a good Grant; for tho' the King has no Reversion, yet he is seized of the Office in Law, and Inheritor of this Grant after. Br. Patents, pl. 57. cites 8 H. 7. 12.

3. Queen Elizabeth granted the Herbage and Pannage of Clipson-Park to J. S. for Life; and afterwards King James by Letters Patents, reciting the former Estate for Life, granted the Herbage and Pannage to the Earl of Rutland for Life, not mentioning in this second Grant, when the Estate in the Herbage and Pannage should begin, yet the Grant was held good; for the first Grant being truly recited in the last, the King could not be mistaken, or intend to pass a greater Estate than he had to grant; and therefore the Estate in the Herbage and Pannage shall commence to the Earl, as by Law it may, viz. after the Death &c. of the first Tenant for Life; nor was there any Uncertainty when it should commence; for tho' the Grant to J. S. might be determined several Ways, either by his Death, Forfeiture or Surrender, yet it can determine but once, and which ever first happens, the other Grant shall then commence. 8 Rep. 55. Mich. 6 Jac. C. B. Earl of Rutland's Case.

4. Queen Mary granted Ellwood-Park to the Lord Stafford and his Wife, and to the Heirs of the Body of the said Lord; afterwards Queen Elizabeth, Anno 7. of her Reign, reciting the former Estate, and that she had the Reversion Expectant, she for the Sum of 53 l. 18 s. granted the Reversion to J. S. and to the Heirs of his Body; and she did further will and declare, that if the said J. S. did pay the further Sum of 20 s. &c. then he should have Prædictam Reversionem to him and his Heirs forever. And it was adjudged that the Words (Will and Declare) are sufficient to amount to a Grant; and such Words are always used in Patents of Liberties and Franchises, being Things contingent, and De futuro; and that such Grant, with a Condition Precedent, might be annexed to Things lying in Grant, as a Reversion, as well as to Things lying in Livery; or to an Estate Tail, as well as an Estate for Life, or Years. And lastly,

1 Bullst. 4.
Earl of Shrewsbury v. Earl of Rutland.
S. C.—
2 Brownl.
209. S. C.—
Jenk. 283.
S. C.

2 Brownl.
248. Malin v. Tully.
S. C.

ly, that the Words (*Reversionem prædict.*) must be intended of such a Reversion as the Queen had, and could grant, viz. the Reversion of the Fee, and do not mean the Reversion in Tail which she had before granted to him, and therefore could not grant to him again. And that such Words, in the King's Grant, ought not to receive too nice a Construction. 8 Rep. 73. b. Trin. 7 Jac. Lord Stafford's Case.

And Holt Ch. J. held, that if the King grant an Office to commence in futuro, when there is no other Estate in Being, to

continue till the Office shall take Effect, that it is good; so if he grant an Office to commence on a Contingency a Year hence, or the like; for tho' a Freehold cannot commence in Futuro, that is to be understood where it is derived out of an Inheritance. If there be an Office in Fee, and the King has the Inheritance, there a Freehold can no more commence in Futuro by Letters Patents than by Livery of Seisin; so is 5 Co. Berwick's Case. 12 Mod. 80. King v. Kemp. — But if it be a New Thing created by the King, he may constitute it in what Manner he pleases; as a *Rent de novo*, may be granted or created to commence in Futuro, or on a Contingency, as in the Case of Ed. 2. quoted in Corbet's Case, in 1 Co. 87. For it is a Creature of his own, and he may dispose of it as he pleases. 12 Mod. 80. King v. Kemp. — And to rise and fall, and to be in Esse, and not in Esse, as well as a Rent. Per Holt Ch. J. Skin. 581. S. C.

(I. c. 3) Grant determined by Death of the King, or Patentee.

1. **W**HERE the King grants to his Tenant, that his Heir after his Death shall not be in Ward, or grants to an Abbot that the Covent shall make an Abbot without Licence of Election, if the Tenant dies his Heir shall be in Ward, or if the Abbot dies, the Covent shall not make an Abbot without Licence; For in the one Case the Grant expired by the Death of the Tenant, because it was not granted to him and his Heirs; and in the other Case, because it was not granted to the Abbot and his Successors; For when the Grantee is dead, none is alive who can enjoy or plead the Grant; But where it is granted to the Tenant and his Heirs &c. the Heir shall not be in Ward; nor where such Grant as above is granted to the Abbot and his Successors; [And there] the Grant is good clearly; Per Laicon; & nemo contradixit. Br. Patents, pl. 30. cites * 36 H. 6. 48.

* It seems that it should be (39) H. 6. 48.

2. If a King grants Consuance of Pleas to J. N. and dies, the Grant is not good against the other King, in as much as it was not granted for the King and his Heirs; For it is de Jure Corone, and yet Confirmation of the new King shall make it good. Brooke says, it seems, That the first Case is not Law. Br. Confirmation, pl. 28. cites 2 H. 7. 10.

Where the King grants Office or Annuity for Life &c. which is not a Judicial Office and dies, there

3. *Contra of Annuity which charges the Person.* Ibid. cites S. C. and says, see M. 2 E. 4. 23, 24. — So of *Frankfe, contra of Judicial Offices.* Ibid.

Br. Confirmation, pl. 29. cites S. C.

4. If the King for him and his Heirs grants *Catalla Felonum & Fugitivorum* &c. which lie in Grant, and he dies, the Grantee needs no Confirmation of the new King; but if the Thing be abused or misused, as Fair, Market or such like may be, or if it be a Thing Judicial, or Power granted, As to be Justice of Peace, Escheator, or such like, there he ought to have

have Confirmation of the new King. But it seems, that *the Grant of a Thing which lies in Grant is good clearly without those Words (for him and his Heirs,)* but of Warranty, Covenant, Annuity, or such like, there he ought to make it for him and his Heirs. Br. Confirmation, pl. 19. cites 33 H. 8.

5. A Licence granted by the King to alien in Mortmain shall serve against the next King, if the Grantor dies. Br. Prerogative, pl. 100. cites F. N. B. 223.

S. C. cited Pl. C. 457. b. Trin 15 Eliz in Sir Thomas

Wroth's Case, where it is said, That it seems to be good Reason, tho' the Grant was not made for the King and his Heirs, in as much as it was granted in the Body Possick of the King — Br. Prerogative, pl. 106. adds that *Crux* it is said elsewhere of Grant made to the Tenant to alien, this shall not serve against the next King — Co. Litt. 52. b. says, That it was resolved, Mich. 3 Jac. in C. B. that the Licence may be executed after.

6. King Edw. 6. granted to foreign Merchants to export Merchandizes, paying the like Customs as any English Merchants paid; now though the Grant did not express *Pro se & Hereditibus*, yet because the King had an Inheritance in the Customs as a Prerogative annexed to the Crown, it seemed to all, that the Grant was good for the Custom. D. 92. a. pl. 17. Mich. 1 Mar. Anon.

7. If the King grants to a Man to export 1000 Tun of Beer, aliquo Statuto non Obstante, and says not, for himself, his Heirs, and Successors, the Question is, If in such Case the Grant determines not by his Death, it being only a Licence Dispensative and revocable before Execution of it? D. 92. a. pl. 17. in an Anonymous Case there, but no Opinion given.

8. The King grants Annuity for Term of Life *Percipiendo ad Receiptam Scaccarii nostri*, and does not say in his Grant, *Pro se & Hereditibus & Successoribus suis*; whether the Heir or Successor shall be charged with this? and the Halendum was, *Percipiendum ad Receiptam Scaccarii nostri per Alnus Thesaurarii Camerariorum nostrorum ibidem pro Tempore existent.* And this Grant was pro Servitio tam Regi H. 8 quam dicto Regi E. 6. impens. It was debated in Serjeant's Inn; And by the Opinion of Cordel Solicitor, Griffith Attorney, Dyer one of the Queen's Serjeants, Whiddon, Brooke Ch. Baron, Morgan and Bromley Ch. J. the Annuity is determined by Death of the King; But Stamford, Saunders, Brown, and Portman held the contrary. Ideo Quare. And it was strongly held, that the Grant is void to charge the Person of the King, and without shewing certainly by whose Hand it shall be rendered, the Grant is void; And this by the Opinion of Fitzh. in N. B. last Case in Writ of Annuity; And then for this Reason there is no need of saying *Pro Hereditibus & Successoribus Regis*; but by reason of the last Words, viz. *Scaccarii nostri per Alnus Thesaur. & nostrorum*, this refers only to King E. 6. and therefore the Estate in the Annuity was limited, and by the King's Death determined. D. 92. a. b. pl. 19.

Ibid 92. b. Pl. C. 450. at the End of Wroth's Case, that by Saunders Ch. Baron, the Resolution of the Judges above was, That if the Annuity was granted *Pro Executione officialium & Serenari*, the Patents stand not in need of the Word *Hereditibus*

9. Queen Mary, Ex specialia gratia &c. made a Grant to A. B. to keep a Tavern and sell Wines by Retail Non Obstante the Statute 7 I d. 6. in which she commanded her Officers to permit the Patentee to keep a Tavern and sell &c. for Life; Catlin held the Dispensation perpetual during the Life of A. B. and that he is, as it were, exempted out of the Statute utterly, or otherwise the Licence being once put in Ure is immediately determined &c. But Dyer and Saunders contra, and that there ought to be certain Time and Limitation of the Prince's Pleasure, How long the Dispensation and Licence should continue, and that by the Death of the Prince this Commandment shall utterly cease. Ideo Quare Legem. D. 92. c. pl. 22. Hill. 10 Eliz. Anon.

Ibid. Marg. cites 17 E. 1. Adjudged, That if the King grants Land to one by Letters Patents, and says not for how long, he shall be let to sell Wine, and not for Term of

Fitzh. which Case Catlin affirmed in C. B. Pasch. 8 July, and that he denied the Opinion of Coke 5 E. 4. s. 21 E. 4. s. 21.

S. C. cited
102. 220.
Tith. 19.
Car. 2. B.
R. in Case
of Thomas
v. Sorrel
says, That
an Interest
passed by
Grant of Re-
friction to
what was
Left Right before the Statute was made.

10. *Wine Licence* was granted by the King Pro se & Hæredibus to A. and B. and their Assigns, to sell Wine in such a Vill. Adjudged, That this continues notwithstanding the Demise of the King. Sid. 67. Mich. 12 Car. 2. C. B. Young v. Wright.

11. And per Bridgman Ch. J. This Case differs from Cases of a naked Authority, in as much as the King who makes the Grant has an Interest of *Inheritance in the Thing* which he grants; And he likened it to the Case where the King granted 10 l. out of *Tonnage and Poundage*; This is good, tho' Tonnage &c. then ceased by the Parliament's not granting it. Sid. 7. in Case of Young v. Wright.

12. So if the King grant the *Tenths* or Fifteenths of D. to J. S. tho' the Clergy at the time have not granted it to the King, yet the Grant is good; Because the Inheritance is in the King, tho' not then in Prender, and so a fortiori the Grant shall be good in the principal Case of the Wine Licence. Sid. 7. in Case of Young v. Wright.

13. Scire facias to repeal a Patent; The Case was, That King Ch. I. granted to one P. the Office of Under-searcher &c. *durante beneplacito nostro*, and after King Ch. II. was restored, he sent his Privy Signet to the Lord Treasurer to confirm P. in his Place. F. obtained a Patent from King Ch. II. of this Place without taking Notice of the former Patent to P. And the Question was, Whether this second Patent was void by the Stat. 6 H. 8. cap. 15. It was agreed on all Hands, that the King's Privy Signet did but intimate the King's Mind, but could transfer no Interest. But the Lord Chancellor, Windham, and Rainsford inclined, That the Patent was void, and the Scire facias to be quashed without better Cause shewn. Freem. Rep. 71. Hill. 1672. the King v. Foster.

See (R) &c.
—(Y. b) —
(A c) pl. 1.
Ancient De-
meine (B)
and other
proper Titles.

(K. c) Grant of the King. Prerogative. What Immunities the King may grant.

1. THE King may grant, that the Citizens of a Vill shall be quit of Toll in every City and Vill in England of all their Merchandizes.

49 E. 3. 6.

2. 3 E. 1. Rot. Clauso Memb. 8 H. 3. Grant that for such time J. S. shall be free De Summonitionibus coram Justiciariis Itinerantibus. 8 E. 1. Rot. Pat. Memb. 4. Hac Vice de omnibus Summonitionibus [coram] Justic. Itinerant. tam ad Communia Placita quam ad Placita de Foresta.

See a Grant
of Discharge
from Pay-
ment of Pri-
vage, which
is made *Circulus de London*. See the Case of Waller v. Hanger; 3 Bulst. 1 &c And see S. C. (R. 1) Supra

3. 2 & 3 E. 1. Charter-Rolls. Memb. 3. Quietation from Toll per totum Regnum, Pro Civibus et Hominibus Bathonum et Episcopi. Per E. 1.

4. H. 6. by his Letters Patents, 20 H. 6. granted to Corpus Christi College in Oxford, that they and their Successors and their Tenants should be discharged of Payment of Toll for Pontage and Passage in every Place in England; which is admitted good. Tr. 43 El. B. R. between Wood and Hawkeswell.

5. 18 E. 1. lib. Parl. 1 R. 1. Grant to the Bishop of Coventry and Lichfield, That all his Lands and Ten liberi sint & quieti de Murdro & Latrocinio & Shire & Hundred, & de Sectis Shire & Hundred, & Auxiliis Vicecom. de Foresta & Placitis Forestæ, & de Variis &c. Atkyn's

Affertis Regardis Forestæ, & omnibus aliis Operibus tam Castellor. quam Vivar. & Stagnor. &c.

6. 23 E. 1. Rot. Pat. N. 9. The King ad Petitionem &c. and by the Assent of the City of London, granted, That J. Citizen of London, should for his Life be free in the City, de omnibus Tallagiis, Auxiliis, Vigiliis & Contributionibus, ratione Terræ & Merchandisarum suarum. Item, quod non ponatur in Assiliis ibidem nec fiat Major, Vicecomes, Elicheator, Coronator, Præpositus, Aldermannus &c. 1 E. 2. Part 1. N. 15.

7. Glanvil, of Lincoln's-Inn, in his Reading in Lent 1629, said, That he had seen a Patent granted to One, that he should not be compell'd to be *Serjeant*, or *Judge*, or *Knight*. D. 52. a. Marg. pl. 1.

(L. c) Prerogative. Immunities.

1. 18. E. 1. Rot. Chartar. Memb. 20. in Dorso. R. 1. granted great Privileges to Hospitallers &c. where are such Words, scilicet, Omnem Potestatem, omnes Libertates & liberas Consuetudines, quas Regia Potestas conferre potest &c. Concessit omne Jus, omne Dominium, quod ad nos pertinet &c.

2. 24 E. 1. Rot. Chartar. Memb. 1. Discharge of Customs and Tallages Pro Priore & Fratribus de Whittenham, Ordinis Carthusiensis.

3. H. 7. granted to the Corporation of Waterford, Quod omnes et singuli Cives et Inhabitantes dictæ Civitatis et omnes et singuli Mercatores, tam indigene quam alienigenæ de nova Custuma vocat. le Poudage viz. De præstatione 12 Denariorum de Libra, imperpetuum sint quieti et exonerati &c. Dav. Rep. 14. a. Mich. 5 Jac. B. R. in Ireland, in the Case of Customs.

(M. c) Patents. Consideration.

See (Q b)

1. **I**F the King be deceived in the Consideration which he intended to have, the Grant is void; otherwise, if not, (Co. 10. 67.) admitted. N. 5 Ja. Scacc. 6 Ja. Sir Robert Johnson's Case. *False Consideration in Letters Patents does not avoid them;*

As where the King, for 10 l. to him paid, gives such Land, and the 10 l. is not paid, the Patent is not void. Contra, On Patent granted upon false Surmise, as that the Land came to the King by Attainder of J. S. which is not true, or the like; Quære Diversitatem. Br. Patents 1 l. 100. cites 37 H. 8. — Br. N. C. 57 H. 8. pl. 210.

In all Cases where the Considerations are real, and favour of the Land, or extend to such a *Real Thing*, if it be false it destroys the Patent. But where the Consideration is *Personal*; as in Consideration of * Money paid, or for Service done; altho' it be false, yet the Patent may be good Per Popham, Attorney-General, Arg. 3 Le 248. Mich. 32 Eliz. B. R. in Case of Harris v. Wing.
* S. P. Hob. 222. in Case of Needler v. the Bishop of Winchester.

2. Surrender of Letters Patents in Chancery to be cancell'd being the Consideration is good; for the Lord Chancellor or his Officers ought to cancel [them]. Co. 10. 67. b. Contra, D. 11. Ja. Scacc. St. Saviour's Case. N. 5 Ja. Scacc. N. 6 Ja. Sir Robert Johnson's Case.

3. If A. leased of Land for Life, takes New Estate of the King, by Letters Patents, in which the said Estate is recited, and in Consideration of this Estate, the King grants it to A. for a certain Estate, This is a good Grant, tho' there was not any actual Surrender, *Feb 25. 1714. See Case of Johnson v. Johnson. 1 S. C.*

render, but only a Surrender in Law by the Acceptance of this new Patent. *Hob. R. 275.*

Hob. 203.

S. C. —

S. C. cited

Hob. 226.

Trin. 16 Jac.

in Case of

Needler v.

the Bishop

of Winchester

er. — Hu t. 7. S. C.

4. But if Baron and Feme are seised in Right of the Feme for Life of the Feme, and the King grants it to the Feme for Life of the Feme, with Remainders over, by new Letters Patents, in Consideration of the Surrender of the first Estate. This is a void Grant, because this Surrender is not absolute, inasmuch as the Feme after the Death of the Baron, may claim her ancient Estate. *Hob. R. 275. between Swain and Holman.*

So a Patent upon a Consideration executory, and not perform'd, is void.

5. If the King makes a Lease for divers Considerations executed and it appears to the Court, that some of them are not performed in truth, the Lease shall be adjudged void. *Id. 11. Ja. Seacc. St. Simon's Case. Resolved.*

Jenk. 304. pl. 77. cites 5 Rep. 93. b. Berwick's Case.

** Fol. 200.*

6. If the King recites, that where B. had surrendered to him an Estate for Life, he, in Consideration of this Surrender, grants it by Letters Patents to B. &c. If this Surrender was not absolute, but upon * Condition revocable, this is a void Grant, because the King is deceived. *Hob. R. 276.*

Lane. 108. S. C.

7. If the King lease Land to B. in Consideration tam de 20 l. paid, quam pro eo quod the said B. super se assumptit to repair the Thing leased at his own Costs, (being then greatly in Decay) and to maintain and leave it well repaired; and after the Lessee doth not repair it; yet this shall not abate the Lease; because the King may have Action of Covenant upon the Patent against the Lessee upon the said Promise. *Id. 8. Ja. Seacc. between Sawyer and East. Dub.*

It is a Maxim That if the Consideration, which

8. Considerations past, and affirmed to be so in the Patent, need not be found, or averred to be true. *Co. 10. 67. b.*

is for the Benefit of the King, be executed or executory, or be it of Record, or not of Record, be not true, or not duly performed, or if Prejudice may arise to the King by reason of the Non performance thereof, the Letters Patents are void. 5 Rep. 94. a. Trin. 39 Eliz. in the Exchequer. Barwick's Case.

5 Rep. 93. Trin. 39 Eliz. Barwick's Case.

10. The Queen granted a Manor for 21 Years. The Grantee granted a Cottage Parcel of the said Manor, and afterwards surrendered the Manor to the Queen, who, in Consideration of the Surrender, granted him a New Lease of the said Manor. The Barons, viz. Periam, Clarke and Evans, agreed, That the second Lease made in Consideration of the Surrender, whereas all the first Lease was not surrendered, was void; Because the Queen was deceived in the Consideration. *Mo. 393. pl. 509. Hill. 37 Eliz. Berwick's Case.*

11. The Lord Chancellor said, That the Service done to the Realm was as valuable as if 500 l. had been given for the Land. *Cary's Rep. 45. cites 23 Jan. 1 Jac.*

12. If the King, in Consideration of Land conveyed by J. S. to the Lord Treasurer for the King's Use, grants to J. S. and the Land conveyed by J. S. is gotten by Disseisin, and the Disseisee enters upon the Lord Treasurer, yet the King's Grant shall stand good; for the Consideration was true, and you must not strain it beyond the Words by any Imaginary Intent. *Per Hobart Ch. J. Hob. 221. Hill. 12 Jac. in the Case of Needler v. the Bishop of Winchester.*

13. When the King makes a Grant by the Words *Ex more Matu*, and yet expresses a real Consideration moving his Grant which is false; Now (since these are Contrarieties, and cannot stand together) the Law shall judge

judge upon the Consideration, and shall not regard the Clause of the Form *Ex mero Motu*, which is *Clausula Clericorum*, but shall reject that as the Court does the Opinion of the Jury when they find the Fact, and conclude upon it contrary to Law. Per Hobart Ch. J. Hob. 222. Hill. 12 Jac. in the Case of Needler v. the Bishop of Winchester.

14. *Void Letters Patents surrendered* are yet a good Consideration, because of the Intention; so that every Deceit, or Mistake in Patents, do not vitiate them. Per Holt Ch. J. Skin. 663. Mich. 8. W. 3. B. R. the King v. Bishop of Chester. — cites 1 Rep. Alton Wood's Case — 6 Rep. 55. — 1 Roll's 32. — 2 Roll's 60. [118] Dickson's Case.

(N. c.) Patents of the King; how they shall enure. To See (G. c.)
how many Intents.

1. The Patent of the King may enure to three Intents expressed in the Patent. Co. 10. 28. As to make an Incorporation, to make Succession, and to grant a Rent, 10 Rep. 28. a. Mich. 10 Jac. B. R. in Sutton Hospital's Case.

(O. c.) How they shall be Expounded.

1. If two Constructions may be made of the Grant of the King, and by one the Grant shall be void, and by the other good; then for the Honour of the King and the Benefit of the Subject such Construction shall be made that the Grant shall be good. Co. 6. Molin. 6. Co. 10. 07. The King's Grants shall be taken beneficially for the Honour of the King, and for the Relief of the Subject

and not to make any strict or literal Construction in Subversion thereof. 6 Rep. 6. a Hill. 9 Eliz. in Seace in Sir John Molyn's Case.

When a Charter of the King may be taken to two Intents, and both Intents are of Effect and good, in many Cases it shall be taken to such Intent, as is most beneficial for the King; but if it may be taken to one Intent of Effect, and good, and to another Intent void, and of no Effect, it shall be taken and construed according to such Intent, that the Grant shall take Effect, and this in Judgment of the Law stands with the Intent of the King: For it was not the Intent of the King to make a void Grant, 8 Rep. 16. a Mich. 7 Jac. The Earl of Cumberland's Case — 5 Mod. 351 Mich. 8 W. 3. S. C. cited Arg. and says, 'That it is a good Rule:— S. P. 8 Rep. 56. Mich. 6 Jac. in the Earl of Rutland's Case— S. P. 10 Rep. 6. b Trin. 11. Jac. in the Church-wardens of St. Saviour's Case. — S. P. 11 Rep. 11. b. Mich. 10 Jac. in the Case of Priddle v. Napper.

2. Patent *ex mero Motu* shall be taken strongest for the Party, and against the King; contra of Patent granted upon *Surmise*, or at the Suit of the Party. Br. Patents pl. 24. cites 37. H. 6. 21. Br. Charters de Pardon pl. 24. cites S. C.

3. *Antient Charters*, whether they were before Time of Memory or after, ought to be construed as the Law was taken when the Charter was made, and according to antient Allowance; And when any claimed before the Justices in Eyre any Franchises by an antient Charter, tho' it had express Words for the Franchises claimed; Or if the Words were general, and a continual Possession pleaded of the Franchises claimed; Or if the Claim was by old and obscure Words, and the Party in pleading expounding them to the Court, and averring Continual Possession according to that Exposition, the Entry always was *Inquiratur super Possessionem & Usam*. 2 Inst. 282.

4. 2 Inst. 496, 497. Upon the Statute of Quo Warranto 18 E. 1. says, The Rule laid down is an excellent one for Construction of the King's Letters

Letters Patents, not only of Liberties, but of Lands, Tenements, and other Things which he may lawfully grant, that they have no strict or narrow Interpretation for the overthrowing them, but *secundum earundem Plenitudinem judicentur*, viz. to have a liberal and favourable Construction for the making them available in Law usque ad Plenitudinem, for the Honour of the King; And that it is also hereby implied, that they are to be construed *Secundum earum Plenitudinem*, viz. *as fully and beneficially as the Law was taken at that Time when they were made*; And Lord Coke adds, That certainly these antient Laws were Directions to the Sages of the Law for the Construction of the King's Charters and Letters Patents, as appears in our Books.

5. 43 Eliz. 1. Enacts, *That the Letters Patents of all Grants made by the Queen shall be expounded most beneficially to the Patentees, any Misnaming, Mis-recital, Non-recital &c. notwithstanding.*

6. Every Gift or Grant of the King has this Condition either expressed, or implied annexed to it; *sc. Ita quod Patria per Donationem illam magis solito non oneretur seu gravetur* 11 Rep. 86. b. Trin. 44 Eliz. in the Case of Monopolies.

7. King James, *Ex certa Scientia &c.* granted to Jehu Webb, the Office of the Master of Tennis-Play, as well within the Palace of Westminster, as of the said King elsewhere, during his Life; It was adjudged, That this Grant should have a reasonable Construction, and extend not only to when the King himself plays in Person, but likewise to Tennis Plays of the King's Household. 8 Rep. 45. Mich. 6 Jac. C. B. Jehu Webb's Case.

8. When the King's Grant cannot be constru'd to a double Intent, the same is then to be constru'd according to the Intent and Meaning of the King. Per Williams, J. Bullst. 6. Hill. 7 Jac. in Case of the Earl of Shrewsbury v. the Earl of Rutland.

Cro. J. 521.
pl. 7. Hill. 16
Jac. B. R.
Sir John
Brett v. Cum-
berland.

9. The King leased for 21 Years, and the Lessee, his Executors and Assigns, were thereby tied to repair. And it was moved, that this being the King's Patent, wherein the Lessee takes only, and not made by him, whether that Clause for the Repairing should be taken and interpreted as a Covenant on the Lessees Part, to bind him and his Assigns. And resolv'd, that it should. Cro. J. 240. Pasch. 8 Jac. B. R. Lord Ewre v. Strickland.

As if the
King grants
to me Liber-
ties in all my
Lands, I shall
have the Li-

erties in the Lands which I had at the Time of the Grant, and not in the Land which I purchase after. Dav. Rep. 15. a. in the Case of Customs, cites 38 H. 6. 10. a. — So if the King grants Liberties in all my Domesnes, and after a Tenancy escheats I shall not have the Liberties in the Lands newly escheated. Dav. Rep. 15. a. in the Case of Customs. — So if the King grants *Catalla felonum quorumcumque*, and after by Parliament an Act is made Felony which was not Felony before, the Grantee shall not have the Goods of a Person attainted of such Felony. Dav. Rep. 15. a. in the Case of Customs. — So where the Bishop of London has *Jura Regalia*, and Escheats of Treason within his County Palatine, he shall not have the Lands of Tenant in Tail, attainted of Treason. Dav. Rep. 15. a. in the Case of Customs.

11. Where there are Words in a Grant of the King, which under a general Name comprehend Things Royal and Things Base, it shall be taken in favour of the King; and the Base Things shall pass, and the Royal shall remain in the Crown. Dav. Rep. 17. a. in the Case of Customs, cites Pl. C. 333. [in the Case of Mines.]

Without
this Recital
C. had not
been remit-
ted, but e-
scaped by Ac-
ceptance of
the said Pa-
tent, to claim
any other

12. A. was attainted of Treason. 'Tis found by Office, that A. was seised of the Manor of D. the Day of the Treason committed. (where in Truth C. was in Possession, and it was his Inheritance) The King grants this to B. in Fee. B. reconveys this Land to the King. The Attainder of A. is annull'd by Act of Parliament. The King by Patent vesting C's Right, grants the Land to C. by Patent. In this Case C. is remitted to his ancient Right in the Manor. By all the Judges of England. Jenk. 196. pl. 4.

Right than by the Patent. Ibid. cites 33 H. 8. Br. Cafes. 206. — The Recital and Grant amount to a Restitution upon Petition of Right. Jenk. 196. pl. 4. (bis.) cites Kelw. 158. 2 H. 7. 17.

13. The Construction made on Grants of the Crown is, That where the *Intention is plain* the Words are taken most favourably for the Subject. Per Raymond, Ch. J. Gibb. 308. Trin. 5 Geo. 2. Dr. Bentley v. Ely (Bishop.)

14. It was objected by Turton, J. That the *general Words* should be constru'd with relation to the *Recitals*, which Holt, Ch. J. said was to sometimes; as when the King designs a Profit to himself; as in a Grant of *concealed Lands*, and not to diminish his Revenue. But if there are *Words to shew his Intent*, *Non Obstante* that they are not concealed, there the Patent shall be good. Skin. 663. Mich. 8 W. 3. B. R. in the Case of the King v. the Bishop of Chester. — cites Hard. 231.

(O. c. 2) *Difference between the Grants of the King and a common Person, as to the Effect thereof.*

1. IF the King grants Lands by Letters Patents, and *says not for what Time*, 'tis but a Lease at Will. D. 270. pl. 22. Marg. cites it as adjudg'd 17 E. 3. and affirm'd by Coke in C. B. Pasch. — — — Jac. And he denied the Opinion of Choke 5 E. 4. 8. 21 E. 4. 46. Cro. 76. 5 H. 5. 3. Co. Litt. 21. b.

2. *Lease of Dutchy Lands* was made by the King *in his Minority*, yet good. D. 209. b. 22. Mich. 3 & 4 Eliz. Anon.

3. By the Common Law the Grant of every common Person is taken more strong against himself, and *more favourable* against a Stranger; but Grant of the King is taken more strong against a Stranger, and more favourable as to the King; tho' the Thing which he grants came to the King by Purchase or Descent. Per Welton, J. Pl. C. 243. Trin. 4 Eliz. in the Case of Willion v. Lord Barkley.

4. If the King grants a Manor, Except all *Courts and Perquisites*, it is good; but in the Case of a Subject, it is void. D. 288. b. 54. Pasch. 12 Eliz.

5. The Deed of a Subject has *Relation* only to the Time of the Delivery, and not to the Time of the Date; but the Charter of the King has Relation to the Time of the Date, and not to the Time of the Delivery; inasmuch as Matters of Record by Presumption of Law, import Truth in them. Per all the Justices. Pl. C. 491. Mich. 18 & 19 Eliz. in the Case of Ludford v. Gretton.

6. The Grants of the King are favourably interpreted, so as *no Prejudice shall accrue to the King by Construction or Implication* upon his Grant, any more than he truly intended by it. 5 Rep. 56. Mich. 30 & 31 Eliz. in Knight's Case.

J. S. was his Vilein, this should not infranchise him by Implication. Ibid. — And if two are indebted to the King, and the King releases to the One, yet this shall not discharge the other. Ibid. cites 2 R. 3. 4. 21 E. 4. 46. and 34 H. 6. — — — And if the King releases all Demands, this shall not release a Right of Inheritance. Ibid. cites 6 H. 7. 15. and 11 H. 7. 10.

7. If the King has two *Manors* A. and B. and grants *totum illud Manerium de A. & B.* Cum Pertinentiis in the County of C. the Grant is void as to the King. In the Case of a common Person both Manors would pass. 1 Rep. 46. a. Trin. 42 Eliz. in Altonwood's Case.

8. By the Words (*Omnes terras Dominicales Manerii de W.*) — In the King's Case, Customary Lands held by Copy, Parcel of the same Manor, shall not pass; but otherwise it is in Case of a common Person. 1 Rep. 46. b. Trin. 42 Eliz. in Altonwood's Case.

S. C. cited
2 L. P. R.
140 tit.
King.

So if the
King had
granted Land
to J. S. and
his Heirs,
and in truth

See Pre-
scription
(M) pl. 7, 8,
9.

(P. c.) Patents Allowance. What Patents need Allowance.

See Conu-
fance (D.)
* Br. Patents,
pl. 27. cites
S. C.

Br. Patents,
pl. 27. cites
S. C.

Br. Patents,
pl. 27. cites
S. C.

* Fol. 201.

Br. Patents,
pl. 27. cites
S. C.

9 Rep. 29. a.
Per the Re-
porter.

* Orig. is
(D'execu-
tion)

1. **T**HE Charter of the King granted before Time of Memory is not of any Value now. 8 H. 6. 4. b.

2. Conuifance of Pleas granted before Time of Memory is not of any Value now, if it has not been allowed since Time of Memory. 8 H. 6. 4. b. * 14 H. 6. 12. b.

3. A Grant de Catallis of fuch Men as fhall be outlawed in a perfonal Action before Time of Memory, is not of Value without Confirmation. 11 H. 6. 50. b.

4. A Release of a Corody by the King to an Abbot before Time of Memory is not any Discharge now, if it has not been allowed fince Time of Memory, tho' the King never was feifed of the Corody after the Release; for it is due of common Right, if there be no Discharge. 14 H. 6. 12.

5. If the King had granted to one before Time of Memory, that he and his Heirs fhould not be impanell'd in any Jury, yet this fhall not be any Discharge without Allowance, tho' he had never been impanelled afterwards, yet he had not * any Means to compel the Sheriff to impanel him. 14 H. 6. 12. b.

6. If the King before Time of Memory granted to another, that he and his Heirs fhould be difcharged of Toll, this is not any Discharge without Allowance. 14 H. 6. 12.

7. If a Man pleads the Charter of the King, dated before Time &c. of Goods and Chattels of Felons, then he may prefcribe to have it with a Confirmation after Time &c. Kel. 8. H. 8. 190.

8. If a Man fhews the Commencement of a Sanctuary, fcilicet, if he fhews the Letters Patents of the King, and the Bulls of the Pope, dated before Time &c. then he may prefcribe with Confirmation after Time &c. but otherwife not. 8 H. 8. 190.

9. If Charter * of Exemption of Jury, or the like, be fhewn in the Time of the fame King who granted it, there needs no Writ of Allowance. Per Opinionem; but Brooke makes a Quære. Br. Patents, pl. 84. cites 39 E. 3. 25.

10. King H. 2. founded the Abbey of St. Bartholomew in London, and granted that they fhould be as free in the Church as the King was in his Crown. It was faid by fome that the King was not barr'd of Corody and Penfion by fuch general Words, becaufe they are incident to him as Founder. Hody, Trefham and Portington held the Grant good; and Portington held it good without Allowance. But Pafton, June and Vamp held it not good without Allowance. Br. Patents, pl. 27. cites 14 H. 6. 12.

11. What can't pafs without Charter, is not good without Allowance in Eire; but otherwife it is of a Thing lying in Prefcription without Charter; for Ufage makes it as Leets, Waifes, Strays. Per Coke Ch. J. Roll. R. 194. in Cafe of the King v. Wray.

12. Grants of Franchifes and Liberties muft be allowed in Eyre; and fo my Lord Rolls muft be underftood in his Abridgment. 2 Mod. 322. Trin. 34 Car. 2. B. R. in Cafe of James v. Trollop.

(Q. c.) Patents Allowance. What Allowance will be peremptory to the King.

1. **I**F Allowance has been of Conuifance in Eyre, this is peremptory to the King. 44 E. 3. 18.

2. But

(R. c.) Patents. Grants. [What] shall pass by general Words, with Reference to other Person or Thing. See (I. b)
(K. b) (L. b)
(Z. b) (A. c)
to (E. c)

(S. c.) *Exemptions.* See (F. f)

4. The King granted to the Bursheffs of G. that they should not be im-
 plevaded Extra their Walls but before the Burgh's of T. of T. only. and in T.

And by some the Grant is void ; For the King cannot compel a Man to sit Extra Bancum unless he will ; But the best Opinion was contra ; and that *it stands with Justice* that the King may grant Conuſance of Pleas, and ſo of Grant of Things done in D. to be tried in B. Br. Patents pl. 67. cites 12. E. 4. 17.

D. 52. Marg. pl. 1. ſays, That Glanvill, in his Reading Lent 1629. ſaid, He had ſeen a Patent granted to one that he ſhould not be compelled to be Serjeant, or Judge, or Knight ; And he took this Difference, Such Things as are in the King to make, as to be a Judge or Knight, the King may diſpenſe with ; But of ſuch Things as are in the Election of the People, tho' the King ſends the Writ to the Sheriff or Coroner to elect Knight of the Shire or Burgeſſes, he cannot diſpenſe.

I. ev 159. S. C. by the Name of the King v. the City of Canterbury — Raym. 113 S. C. —

6. The King cannot grant a Charter of Exemption to any Man to be freed from Election of Knight, Citizen, or Burgeſſes of the Parliament (as he may do of ſome inferior Office or Places) becauſe the Elections of them ought to be free, and his Attendance is for the Service of the whole Realm, and for the Benefit of the King and his People, and *the whole Commonwealth hath an Interſt therein* ; and therefore a Charter of Exemption that King H. 6. had made to the Citizens of York, of Exemption in that Caſe, was by Act of Parliament enacted, and declared to be void. And tho' we find ſome Precedents, that *Lords of Parliament* have ſued out Charters of Exemption from their Service in Parliament, yet thoſe Charters are holden to be void ; For though they be not eligible, as is aforeſaid, yet their Service in Parliament is for the whole Realm, and for the Benefit of the King and his People, of which Service he cannot be exempted by any Letters Patents. And if he hath *Laſam Phantaſiam*, or be extremely ſick, or the like, theſe be good Cauſes of his Excuse in not coming, but no Cauſe of Exemption ; for he may recover his Memory and Health &c. So as the ſaid Precedents were Grants de Faſto, not de Jure ; for if the King cannot grant a Charter of Exemption from being of the grand Aſſiſe in a Writ of Right, or of a Jury in an Attaint, for the Miſchief that may follow in thoſe private Actions ; a ſortiori, he cannot grant any Exemption to a Lord of Parliament ; For his Service in Parliament is publick for the whole Realm. But if any Lord of Parliament be ſo aged, impotent, or ſick, as he cannot conveniently, without great Danger, travel to the High Court of Parliament, he may have Licence of the King under the Great Seal to be abſent from the ſame, during the Continuance or Prorogation thereof ; but if the Rehearſal be not true, or if he recover his Health, ſo as he become able to travel, he muſt attend in Parliament ; Or without any ſuch Licence obtained, if he be ſo aged, impotent or ſick, as is aforeſaid, and yet is amerced for his Abſence, he may reaſonably and honeſtly excuſe himſelf by the Statute of 5 R. 2. 4 Inſt. 49. cap. 1.

7 The King granted to the City of Canterbury, a Privilege to be exempted from ſerving on Juries out of their City, excepting only in Caſes of Treason ; and in expreſs Words that they ſhould not ſerve *Coram ipſo Rege* ; And it was agreed by all, that without ſuch expreſs Claufe, the Grant would not exempt them from ſerving on Juries in the Court of B. R. Sid. 243. Paſch. 17 Car. 2. B. R. The King v. Percival & al.

Hard. 389 S. C.

2 Keb. 50. pl. 4. &c 54. pl. 14. S. C. by Name of the City of London. v. Swallow.

8. It was agreed per omnes, that though the *Privileges of London* are confirmed by Parliament, the King may by his Charter grant Exemptions from them. Sid. 288. Trin. 18 Car. 2. B. R. in the Caſe of Swallow v. the City of London.

9. In Replevin, the Defendant avowed the Taking as a Diſtreſs towards the repairing the Highways. The Plaintiff replied and ſet forth a Grant from the King for exempting the Lands, where &c. from that Duty : It was argued, that ſuch Grant was not ſufficient, becauſe it was prior to the making this Statute, and ſo before any Cauſe of Action, and Judgment accordingly was given for the Avowant. 3 Mod. 96. Hill. 1 Jac. 2. Brett. v. Whitchoſe.

10. Exempt Jurisdiction is this, and was granted to Cities and Towns corpCorate for Benefit of Trade ; it was a Grant to the Freemen of ſuch a City

City or Town, that they should not be impleaded out of their City or Town; and this Grant was good, if there were a Court in the City or Town, to hold Plea of the Matter. Per Holt Ch. J. 12 Mod. 644. In the Case of Croſſe v. Smith.

11. As to an *Exempt Jurisdiction*, that always is for the Benefit and Ease of the *Resiants* within such a Vill, Borough &c. not to be sued out of their Vill &c. And then sure they may waive that Benefit, and remove their Causes to the superior Courts; And if one, who is within an Exempt Jurisdiction, be impleaded out of it, his Way is to plead it, and the Lord has nothing to do with it. 12 Mod. 666. In the Case of Taylor v. Reignolds.

12. Lord Lieutenant of Middlesex is empowered by the 14 Car. 2. to inflict a Penalty of 20 l. upon Persons so and so qualified for not finding a Horse &c. to serve in the Militia. King Cha. 2. in the 15th Year of his Reign, granted to the College of Physicians a Charter of Exemption from bearing or providing Arms to serve in the Militia, by which Charter another is recited, which was granted to the said College by H. 8. and another by Ja. 1. exempting them from several Services. It was strongly argued Pro & Con. whether the King could grant Charters of Exemption from Penalties &c. imposed by Act of Parliament. The Court, upon the first Argument, declared it a Case of great Difficulty, and Consequence as to the Prerogative of the King, and the general Right of the Subject, and therefore ought not to be determined on a Case stated. But upon this first Argument, the Ch. J. was of Opinion, that the King by his Prerogative could not dispense with an Act of Parliament which was made for the publick Good of the whole Nation; But the Question in this Case was, Whether this Statute had divested the King of any Part of his Prerogative, or whether it was made to ease him of the Care of Arraying Militia, and intrusting the Lieutenants and other Officers therewith; For if it was, then it did not divest him of any Authority he had before the Act. Now he was of Opinion, that this Charter did not exempt the Physicians from being contributory to the finding Men to serve in the Militia, tho' probably it might exempt them from Personal Duties; yet it cannot be inferred from thence, that he might exempt them from being contributory to others to perform those Duties which are required by an Act of Parliament, especially where the Subject hath an Interest that such Duties should be performed, or a Loss if they should not, and the better Opinion seemed to be, that the King could not exempt in such Cases. That in the principal Case, the Contribution to be made to the finding a Man with Arms to serve in the Militia, is a Charge upon the Lands, as well as on the Persons of the Owners; and if this Charter of Exemption should be good, it would increase the Charge on all the Lands of Persons not exempted, which would be a very great Damage to such Persons, because the Physicians who are exempted are a considerable Body of Men in every County; for which Reason it would be very hard if the King had Power to lessen the Tax imposed upon one Man, and charge it upon another; Besides the King cannot exempt in any Case where the Subject hath an Interest, As where particular Persons are bound by Prescription or Tenure to repair Bridges, the King cannot exempt them from repairing; because all the Subjects have a common Benefit to pass and repass over publick Bridges; But it was adjourned for a farther Argument. 8 Mod. 18, 19 Mich. 7 Geo. 1721. The Case of Sir Hans Sloane, President of the College of Physicians.

S. P. Per Holt Ch. J. 12 Mod. 644. in Case of Croſſe v. Smith.

* S. P. or to make a Bridge; but of Contribution to a Bridge, he may discharge as it seems square. F. N. B. (227) 524. in Note cites Fitzh. Aſſe 445. 3 E. 3.



(T. c.) Exemption. To what Thing it shall extend.

1. If the King grants to a Bishop, quod omnia Maneria, & omnes Terræ & omnia Feoda, of the said Bishop and his Successors inde in perpetuum libera sint & quæta of such Forest of the King &c. The Bishop alia Maneria sua Terras & Homines suos clamare non potest eque quæta de Foresta, quam illa quæ tempore Confectionis illius Chartæ fuerunt in Seitina of the said Bishop. 18 E. 1. lib. Parl. 1. Bishop of Coventry and Litchfield's Case.

2. If the King grants to an Abbot, That he & Homines sui sint quieti ab omni Theolonio in omni Foro & in omnibus Nundinis, & in omni transitu Portuum Viarum & Marium, per totum Regnum nostrum & omnia Mercata sua & Hominum suorum &c. The Abbot and his Men shall be only quit Ex Præstatione Theoloni in Venditionibus & Emptionibus per ipsos factis de Necessariis suis, ut in Victu, Vestitu, & similibus & hoc ad Opus proprium ipsorum Abbatis, & Hominum suorum, sed si prædictus Abbas aut Homines sui Emptiones, seu Venditiones fecerint ut Mercatores communes, & de communibus Merchandisiis & Ratione Merchandisarum faciend. debent Theolonium, sicut & ceteri Mercatores communes, Non Obstante Charta prædicta.

3. No Franchise, nor Charter of Exemption, shall be allowed against the King, nor Array shall not be challenged against the King. Br. Prerogative. pl. 87. cites 38 Aff. 19.

Fr Patents,
pl. 71. cites
S. C.
Tenk 138
pl. 83 cites
21 E. 4. 48.
The Abbot of
Waltham's
Case. S. C. —
And Judge
Jenkins says
this is a good
Precedent.
Nice Con-
structions of
the King's
Patents are a
Dishonour
to him. —
S. P. Br.
Exemption.
pl. 14. cites
2 R. 3. 4.
And that the
King may
exempt
Clerks from
the Collec-
tion of Tenths, tho' the Bishop be inheritable to name Collectors; and that upon such Discharge the Bishop ought to name and certify to the Exchequer another Collector. And if he who is so exempted takes upon him the Collection in one County, yet he may plead his Patent as to another County, if he be assigned Collector there. — Br. Patents, pl. 90. cites S. C.

4. Grant was made by the King to the Abbot of C. that he should not be Collector of the Tenths granted per Clerum Angliæ, and Tenths were granted by the Province of Canterbury, and the Abbot was appointed to be Collector of it by the Archbishop of C. and pleaded his Patent in the Exchequer to be discharged, inasmuch as this Tenth was not granted per totum Clerum Angliæ; For the Province of York granted nothing. And also the Convocation granted that no Person privileged should be discharged &c. but this is not to the Purpose; For this cannot toll the Power of the Grant of the King; And yet Per Cur. the Grant is good, though it be not by all the Clergy; For the Province of Canterbury and York do not intermeddle; And also the one and the other is Clerum Angliæ; For if one be bound to pay 20 l. if Men of L. come to B. there if two Men of L. come to B. the Obligor shall pay the 20 l. tho' all the Men of L. do not come to B. and also the Patent is Ex certa Scientia & mero Motu, which is taken most strongly against the King; Contra of Patent upon Suggestion; And the not shewing of the Patent in the Convocation House is no Estoppel against the Abbot; For they can neither allow nor disallow it there; And it is no Matter tho' the Abbot was one of them in the Convocation who granted the Tenths; For this is Diversis Respectibus, and therefore the Patent and Grant is good. Per. Cur. Br. Exemption. pl. 9. cites 21 E. 4. 44.

5. If the King grants to one a Franchise Royal, scilicet, 'That he and his Heirs shall be quit of Toll &c. If he dies without Heir of the Part of the Father, the Heir of the Part of the Mother shall have Advantage of this Discharge. Pl. C. 445 b. Pasch. 15 Eliz. in the Case of Cleric v. Broke alias Cobham. — cites 49 E. 3.

6. The Queen granted by Letters Patents to Pelham, *that he should not be Bailiff, Contable, or other Officer or Minister, licet eligatur.* Adjudged that this Grant shall not discharge him, if the Queen make him *Sheriff of a County*; for the Word Officer in the Patent, shall not extend to Royal Officers; And also the making of a Sheriff is not by Election, but by Denomination only of the Queen; so that if he have not these Words (*Licet eligatur per nos*) he shall be Sheriff. Held before the Treasurer and the Barons in the Exchequer Chamber, And they said it was the Opinion also of Ld. Chancellor Bromley. Godb. 21. pl. 28. Pasch. 25 Eliz. Pelham's Case.

(U. c) * *Liberties.*

* Liberties in this Place signify the Franchises and Privileges which the Subjects have of the Gift of a King, as the Goods and

1. **A**mong the Petitions of the Parliament 18 E. 1. fol. 3. there is such Petition, *Priorissa de Auriuum petit Allocationem Chartarum suarum, Fines, Amerciamenta hominum suorum, Litoveria sua, Visum Forestarum & plurimas alias Libertates in Nova Foresta & pro tenentibus in Woodrowe; quæ omnia Rex concessit juxta formam Chartarum suarum & præcepit Chancellar. &c.*

Charles of Felons, Outlaws, and the like, or which the Subject claims by Prescription, as Wreck, Waif, Stray &c. 2 Inst. 47.

2. And among the said Petitions, fol. 2. Radulphus Pipard petit quod uni possit Regalibus Libertatibus in Manerio suo de H. sicut Johannes Gifford coram Rege recognovit &c Concessum est per Concilium quod sic fiat & baronibus de Scaccario mandatur in forma prædicta.

3. 12 E. 1. Rot. Wallie. Memb. 1. The King granted Returnum Brevium to the Bishop of Bangor &c. 35 E. 1. Rot. Chartar. Memb. 16. such Grant.

4. King D. 3. granted to the Vill of Shrewsbury Authority to take Toll in their Market, scilicet, a Halipenny of every &c. Cr. 43 El. B. R.

5. Rot. Parl. 42 E. 3. n. The City of London, and all other Cities and Boroughs of England pray, That where it is contained in the Great Charter, that they ought to have their Franchises which were confirmed by divers Progenitors of the King to sustain their Charges, and among others they have used, that none should sell Merchandizes nor Victuals at Retail, if they were not infranchised within the Cities and Burghs, the which usage they have had in the Time of all his Progenitors, and in his Time till the ninth Year of his Reign, * which was then taken away, to the Undoing of his said Cities and Burghs; they pray, That it please the King in this Parliament to confirm their Franchises granted to them, notwithstanding the Statutes and Ordinances made to the contrary, and that none sell at Retail within the said Cities and Burghs, † if he be not a Man infranchised among them, and that no Merchant alien buy of other Merchant alien any Merchandizes nor ‡ Wares within the Cities and Burghs to sell again. Answered, It is assented, that those of London and no other sell at Retail Victual only, and this of the especial Grace of the King till the next Parliament, that it be well ruled and governed in the mean time to the Common Profit; and it is the Intention of the King, that no Prejudice be done to the Cities and Burghs have Franchises by Charters of Kings.

* Orig. is (Que four fait tolse en Antientement de ses dits Cites &c.)

† Fol. 2. 3. (Orig. is (Dicitur))

6. 7 E. 1. Rot. Pat. Memb. 5. in Dorso. Commission ad Inquirendum si Warrinus Filius & Heres Th. W. habere debeat Furcas ad Manerium suum de W. & Judicium de Malefactoribus ibidem captis pro Feloniis & aliis Transgressionibus factis eo quod Abbas de Claffenbury ipse hujusmodi furcas nupervento prostratas iterum levare non permittit.

7. 8 E. 1. Rot. Pat. Memb. 1. Cum Hen. quondam Rex Anglie primus per Chartam concessit Radulpho de Monte Canisio, quod Terræ ejus & homines sui sint quieti de Shiris & Hundred. & omnibus querelis quæ pertinent ad Shiras & Hundred. Excepto Murdro & Thesauro, & Willielmus de Monte Canisio & omnes Antecessores sui virtute Concessionis prædictæ habuerunt Visum Franci Plegii & Turnum Vic. in omnibus Terris & Feodis suis donec nos Visum & Turnum prædictum de hominibus & Tenentibus suis in Curia nostra coram Justiciariis nostris ultimo Itinerantibus in Comitatu Cant. per Considerat. ejusd. Cur. versus præfat. Willielmum distraxerimus Occasione abusus earundem Libertat. Nos nunc Visum & Turnum prædictum in Terris & Feodis suis illi restituiimus &c.

Prynne's
Cott Rec.
Abr. 54. 21
E. 3. No. 17.
— * Orig.
is (Apoc.)
— † Quære
the English
of those
Words.

8. Rot. Parl. 21 E. 3. M. 17. The Commons pray, for that the Franchises have been so largely granted in Times passed by our said Lord the King, that all this Land is * almost all infranchised, to the great † Arrelement and Enfeoffment of the Common Law, and in great Oppression of the People. Please our Lord the King to restrain such Grants for the time to come. Answer, The King will order, that the Franchises which shall be granted shall be made by good Advilement.

9. The King made a Corporation, and granted to the Bailiffs and Citizens their Heirs and Successors, *that the Bailiff and Recorder of the said City for the Time being, or two of them, of whom the Recorder to be one, Unacum hujusmodi aliis Personis per nos &c. ad hoc Assignatis, shall be Justices of Gaol-Delivery for the said City, and that no Sheriff, or Justice of Peace, or other Minister or Commissioner of the King, his Heirs or Successors &c. shall in the said City, in any Thing therein to be done intermeddle under the Penalty of 100 l. &c.* The Question was, Whether the Justices of the General Gaol-Delivery of the County might try Felonies committed in the City; And it was held per Popham, Anderlön, and Periam, That they might, because this Patent, as to holding a Gaol-Delivery by the Bailiffs and Recorder, is void; for they have no Authority but jointly with such as the King shall appoint; And that Appointment the King is not obliged to make; but if he does make it, it must be by Patent, and not otherwise; and therefore they cannot have a joint Authority with the Bailiffs, whose Authority (if they have any) must arise from their Patent; and so at several Times; so that the King is deceived in his Grant, in mistaking the Law; and therefore the Grant is not good. 1 And. 296. Anon.

See (1. b) pl. (X. c) In what Cases they shall be extinct by coming to the Crown.
1, 2, 3.

1. **I**F the King grants certain Manors which are within his Forest of D. to a Bishop and his Successors, and grants further, that they shall have the said Manors free and acquitted of the said Forest and Pleas of the Forest &c. And after the said Manors come into the Hands of the King, and he restores them to the Bishop, yet the Bishop

Bishop shall not be exempt from the Forest for those Manors. 18 E. 1.

lib. Parl. 2. The Bishop of Coventry and Litchfield's Case.

2. A Liberty to have *Wreck* as appendant to his Manor shall be extinct by *Escheat* to the King. Keilw. 137. b. Itin. temps E. 3.

Wreck See as appendant to his Manor shall be extinct by *Escheat* to the King. See Keilw. 147. a. b. Itin. temps E. 3.

3. It was adjudged in B. R. that where a Man has *Returna Brevisium* S. C. cited which comes to the King by *Unity of Possession* or otherwise, the King shall use it as well as his Tenant, or him by whom the King claims, and so this *Unity of Possession* in the King does not extinguish the Liberty; Quod Nota &c. Keilw. 72. a.

says it is only a Ministerial Thing,

4. If the King purchases a Manor to which *Franchises Royal* are regard- Br. Inci-
ant, and after gives the Manor *Simul cum Libertat. ad illum spectant.* no dents, pl.
Liberties pass; For by the Purchase, the *Franchises* of common Right 12. cites S.
was annexed to the Crown. Br. Extinguishment, pl. 32. cites 43 Aff. C. — *Con-*
10. per Thorp. tra, if he
gives the
Manor cum

Libertate ad illud spectant. Tempore quo Manerium fuit in manibus of the Feoffor; For they were extinct before as it seems, and by him, by those Words they pass as Appendants. Ibid. — Br. Incidents, pl. 12. cites S. C.

5. *Unity of Possession* of Liberties in the King is an Extinguishment. When a Br. Quo Warranto, pl. 11. cites 15 E. 4. 7.

the Hands of the King it is extinct; For it shall not be said *Franchise* in his Hands. Br. Quo Warranto, pl. 9. cites 15 E. 4. 10. — For if I have *Fair or Market* of the Grant of the King, and I grant it to the King, he takes it of me by Way of Extinguishment. Ibid.

Liberties which the King would have himself throughout England if not granted to or prescribed for by a common Person are merged in the Crown, if a common Person that had them by Grant or Prescription commits a *Forfeiture* of them, or they come otherways to the King, and the King has them by his Prerogative; and they cannot afterwards be granted but by a new Creation, as *Wais, Sney, Wreck &c.* But such Liberties as a common Person has by Grant or Prescription which the Kings (if such Grant or Prescription had not been) could not have by his Prerogative, as *Warren, Park, Fair, Market with Toll &c.* if these come to the Crown &c. they remain in Esse, and are not extinct; For if the King should not have them, by this Means they would be lost. Cro. E. 591. Mich. 39 & 40 Eliz. B. R. Heddy v. Wheelhouse.

6. A Manor, to which *Wreck* belonged by *Prescription*, came to the King's Hands, who granted to A. the Office of Admiral, with all Wrecks at Sea, and all Profits to the said Office belonging; this does not pass the *Wreck* Appurtenant to the Manor. 12 Mod. 259. Hill. 11 W. 3. B. R. Wiggan v. Branthwaite.

(Y. c) * Liberties. Seisure.

1. Among the Petitions of Parliament 18 E. 1. there is such a Petition, Gives London petunt, quod Rex velit eis concedere pristinum statum, scilicet, Majorem & Antiquas Libertates Rex non habet inde Consilium quia sunt in bono Statu ut sibi videatur, & hac Vice Statum non mutabit, ex quo Omnia bene fuerint ut Omnia sint in Pace, & nullum Commod. apparet.

as Felons Goods &c. the which if they are forfeited Judgment may be of Ouster or Seisure; for the King may have them again. 2dly A Thing newly created, the which the King cannot have, As a Corporation, the which, if it commits a *Forfeiture* and Judgment of Ouster be given, in such Case there needs no Seisure; for to what Purpose shall there be a Seisure by the King, when he may not have it? The same Law of a Judgment or Seisure, as forfeited; for this amounts to a Judgment of Ouster. Otherwise of a Seisure Quousque. 3. There are Things newly created, as Markets &c. the which may subject after Seisure by

Fol 204.

See Franchise (F)

* Liberties are of three Kinds; 1st. Those which are Ancient Flowers of the Crown.

by the King; and in such Case, tho' Judgment of Ouster be given, there shall be a Seizure for the King. Skin 311. Hill 3 W. & M. B. R. The King v. the City of London — 12 Mod. 18 S. C.

2. Among the said Petitions of the Parliament of 18 E. 1. fol. 5. there is such Petition, Libertates de Norwich captæ fuerunt in manus Domini Regis quas petunt Homines ejusdem sibi restitui; faciant finem pro transgressione & similiter tenetur debitum integraliter quod Allocationem qua & fiat eis ad Scaccarium Justitia.

Quia Homines de Southampton verberaverunt & vulneraverunt usque ad Mortem Gilb. Canon qui exequabatur Præceptum Regis in dicta Villa, pro transgressione Villæ capta fuit Villa ista in Manum Regis, & finem fecerunt. Et firmam suam exaltaverunt ad 20 l. per Ann.

3. 13 E. 1. Rot. Fin. Memb. 10. Pro Civibus de Norwico, Restitution alter taken into the Hands of the King Pro Combustione Ecclesiæ &c.

If the Defendant makes Default in Quo Warranto, the Fran-

4. If one who has a Franchise does not come at the first Day of the Eyre, then his Franchise shall be seized into the Hands of the King, and he shall make a Fine, and shall have his Franchise by Replevin. Keilw. 152. b. 6 E. 1.

chise shall be seized into the Hands of the King, and the King shall be answered of the Profits, and if he does not replevy them within the Eyre, he shall lose the Franchise for ever. Br. Quo Warranto, pl. 7. cites It. Canc. 6 E. 2. 7.

5. Assise of Bread and Ale, Pillory and Tumbrel, are appendant to View of Frankpledge, where a Man has it by Grant of the King; and if he does not use Pillory and Tumbrel, he shall lose his Franchise. Br. Quo Warranto, pl. 8. cites It. Canc. 6 E. 2.

6. If one touches Record of a Franchise, and at another Day shews the Charter; quære if he shall forfeit his Franchise by Failure of the Record. Keilw. 138. a. Itin. Temps E. 3.

7. Liberties claimed by one as appendant to the Manor of B. were seized into the Hands of the King, because the Franktenement of the said Manor was not in him who claimed them. Keilw. 139. b. pl. 7. Itin. Temps E. 3.

8. In Quo Warranto, if one claims Warren as Appendant to his Manor, and another claims it as Appendant to his Manor, and makes Default, Judgment shall be that the Franchise be seized, but cesset Executio till the Inquest be pass'd. Keilw. 148. b. Itin. Temps E. 3.

9. The Bishop of Durham pretending to have such Privileges, that the King's Writ ought not to run there, imprisoned him, and brought the

9. A Prohibition was awarded out of C. B. to the Bishop of Norwich, and he excommunicated the Person who served him with the Writ; and thereupon the Party brought his Action, and declared upon all this Matter, and the Bishop being found Guilty, it was adjudged that his Temporalities should be seized until he absolved the Plaintiff, and satisfied the King for the Contempt of his Writ; and Damages to the Party of 10000 l. and this Judgment was affirm'd in Error brought in B. R. Cro. C. 253. says such Precedent was shewn of Trin. 21 E. 3. Rot. 46. or 460.

King. H. 1. neither; and therefore an Information being exhibited against him, and this Offence prov'd, it was adjudged that he should pay a Fine to the King, Et quod capiatur, and should lose his Liberties for his Time; and the Entry upon the Roll is, That he shall lose his Liberties, because Justum est quod punietur in eo quo peccat. Cro. C. 253. in Tyndall's Case. cites 33 E. 1. Rot. 101.

S. P. 2 Inst. 282. — S. P. Keilw. 159 a pl. 5 Itin. Temps E. 2. — S. P. And not that it

10. In Quo Warranto the Writ was returned served, and the Defendant did not come, and Venire facias issued returnable in another Term, which was returned served, and he did not come, and therefore the Franchises were seized; and for the Default of the Defendant Judgment was, that it be * seized into the Hands of the King. Br. Quo Warranto, pl. 9. cites 15 E. 4. 10.

shall be forfeited; for it does not appear whether there be Cause of Forfeiture. And no Man shall finally lose his Land or his Franchise upon any Default, if he has never appeared. By the Judge of Bench.

both Benches. Jenk. 141. pl. 91. cites 15 E. 4. 7. — But it was said, that if a Man has used Franchise without Title, Judgment shall be that he be ousted. Br. Quo Warranto, pl. 9. cites 15 E. 4. 10. — But if he misuses a Franchise which he has by Title, the Judgment shall be that the Franchise be seized into the Hands of the King. Ibid. — * Britton, cap. 19. page 30. (55) (57.)

Quo Warranto was brought for using certain Liberties, viz. Fairs, Markets and Courts; At the Day of Return of the Writ Defendants did not appear. It was agreed by the whole Court, that if they do not show good Cause in Excuse of their Default, their Liberties shall be seized into the King's Hands, according to the Book in 15 E. 4. 2 Roll Rep. 92. Trin. 17 Jac. B. R. The King v. the Mayor &c. of Wygorne in Lancaster.

11. Writ of Error to remove a Record out of B. and the Bailiffs did not send it, nor come till the Pluries, which is a Process of Contempt, and took Day to bring it in, and failed at the Day; and by several their Franchise shall be resealed, viz. their Consuance of Pleas; quære. Br. Releifer, pl. 29. cites 20 E. 4. 5.

Br. Franchises, pl. 26 cites S. C.

12. The Abbot of C. had a Gaol, wherein diverse Men were imprisoned, and because he detained some, that were acquitted of Felony, after their Fees paid, the King seized the Gaol for ever. 2 Inst. 43.

S. C. cited in 9 Rep. 96 b. Hill. 9 Jac. in Sir George

Reynull's Case, as 20 E. 4. 5. b. the Abbot of Crowland's Case.

13. If Steward of a Liberty arraigns a Man by Colour of Infangthief, and adjudges him to Death, the Liberty shall be seized by this, but the Steward shall suffer no Pain; for he did it Colore Libertatis, and therefore no Felony; quod nota. Br. Corone, pl. 173. cites 2 R. 3. 9. 10.

14. If a Ville incorporated by Letters Patents before Time of Memory, and those Franchises never used since Time of Memory, they have lost their Franchises. Br. Franchise, pl. 10. cites 14 H. 7. 1. Per Vavifour.

Non-user of a Liberty doth not determine it, nor any Pre-

scription which goes with it. Arg. Godb. 238. Mich. 11 Jac. C. B. in Case of Cowper v. Andrews

15. If a Lord does not make Hue and Cry within his Franchise, Lord Coke says, it seems that he shall lose his Franchise for ever; for the Words of the Statute are, That the King shall take to himself the Franchise (viz. as forfeited.) 2 Inst. 173.

16. The Non User of a Fair, or Market, or Courts, or such like Liberties, wherein the Subjects may have Interest for the Common Profit or Common Justice, is Cause of Seizure of them; But the Non User of Parks or Warrens, or such like, which are to the Profit or Pleasure of the Owner only, is not any Cause of their Loss or Forfeiture. Per Coke, Ch. J. said to have been so adjudged. Cro. J. 155. Pasch. 5 Jac. B. R. Leicester-Forest's Case. — Affirm'd by Popham; but he said, it had been about the same Time adjudged otherwise in the Exchequer. Ibid.

17. In Case of Prescription for Warren within Forests, altho' it had not been used for divers Years, if he that had it, had it by Grant, or can prove it by Prescription, a Non User is no Cause of Forfeiture thereof. Resolved. Cro. J. 155. in the Case of Leicester-Forest.

18. There is a Diversity where the Liberties are subordinate and dependent the One upon the Other; there the misusing and abusing of a Liberty is Forfeiture of all the Liberties; but otherwise it is where the Liberties are several. Arg. And Montague, Ch. J. held it clearly so. And Doderidge, J. accordingly; But if one misuse and abuse the Fair, he forfeits the Court of Pie-powders, because it is incident to the Fair. 2 Roll. 1 Rep. 156. Hill. 17 Jac. B. R. in the Case of the King v. the Warden of Maidenhead.

19. The Franchise &c. of a Body Politick may be seized or surrendered &c. and the Body itself remain untouched, as appears in the Bishop of Norwich's Case, and more clearly in the same Case after in Jones, Fulthard and Haywood's Case; for Franchises &c. are not essential to a Corporation, but a Privilege pertaining to it. Skin. 311. Hill. 3 W. & M. in B. R. The King v. the City of London.

(Y. c. 2) *Pleadings of Letters Patents, Exemptions &c.*

1. **H**E, who would make Title to a Franchise by Grant of the King inroll'd in Chancery, without shewing the Charter, ought to have the Record ready. Keilw. 140. a. Itin. temps. E. 3.

* In the smaller Editions of Brook the Word (Ne) is inserted, but in the larger Edition it is omitted.

2. In Quare Impedit, where a Man would intitle himself to an Advowson because the King was seised, and granted it to J. and E. for Life by Patent, and after granted the Reversion to three in Fee; there, if he will plead the first Patent or Grant for Life, he ought to shew certainly the Date and the Year, Day, and Place; for if the other will say, *Nat tuel Record*, it cannot be certified,* [nor] exemplified, if he does not plead it certain. Per Prist. But, Per Danby, it suffices to say and plead the Patent of the Grant of the Reversion in this Form, *sc. That the King, by his Letters Patents, bearing Date &c. reciting, that where he had granted the Advowson to J. and E. for Term of Life, he granted the Reversion to three in Fee, who granted it to the Defendant &c. and then well; But, Per Pristor, if he will plead the first Patent, he shall plead it certain. Br. Pleadings, pl. 58. cites 38 H. 6. 35.*

3. In Assise upon Grant of the Office of Clerk of the Crown in Chancery he need not shew if there was such an Office at the Time of the Grant, or not; For, Per Catesby, the King by this Word (*Concessimus*) may grant an Office which had Esse before; but by those Words (*Constitutimus* & *Ordinavimus*) he may make an Office and Officer which had not Esse before. Br. Patents. pl. 21. cites 9 E. 4. 11.

4. A Patent, or Record, shall not be pleaded by Rehearsal, but by Matter in Fact. Br. Pleadings. pl. 110. cites 21 E. 4. 44.

3 Le. 193. pl. 240. cites S. C. by Name of Barn's Case.

5. In *Trespass* the Defendant justified the Taking as his proper Goods, and pleads a special Justification; the Plaintiff replied, and made Title to the Goods by a Seizure; for that the King by Letters Patents *dedit & concessit* to the Town of L. *Liberty of a Market &c.* and shewed a special Cause of Seizure, as an Officer there; and upon Demurrer the Plaintiff had Judgment. Error was brought, and it was assign'd for Error, because the Plaintiff had made a Title by Letters Patents, but did not say, *Sub magno sigillo Angliæ confectas*; And this was held clearly an Error; for if the Grant was not under the Great Seal, it was not good; and tho' he saith, that it was inroll'd in Chancery, yet this is not good; for any Patent may be inroll'd there, and therefore the Judgment was revers'd. Cro. E. 117. Mich. 30 & 31 Eliz. B. R. Kingdon v. Barne.

6. King James by Letters Patents inrolled in B. R. granted to the Earl of Southampton all *Deodands* within the Manor of Titchfield; an Inquisition was certified in B. R. that a Deodand was forfeited within the Manor, and Process went out &c. Upon a Motion in Behalf of the Coheiresses of the Earl, for the Direction of the Court, Whether they should be oblig'd to set forth their Title in Pleading, which would be inconvenient, and the Charge exceed the Value of the Deodand, the Court said, That if they could satisfy the Office of their Title without pleading it, that should be sufficient in regard the Letters Patents were inrolled in this same Court. 1 Vent. 142. Trin. 23 Car. 2. B. R. Earl of Northampton's Heir's Case.

(Y. c. 3) Pleadings of Letters Patents of Grants, Exemptions &c. And in what Cases there must be Proffert or *Monstrance* of them.

1. **I**F a Gift in Tail be by the King by his Letters Patents, which is executed, yet the Heir shall not have Formedon against the Letters Patents. Per Martin, clearly. Br. Monitrans. pl. 2. cites 2 H. 6. 14. The King gave to the Earl of Rutland in Tail, and after intended to give

it to him in Fee-Simple, and to extinguish the Tail; and it was doubted, that the Surrender of the Letters Patents of the Tail, and the Cancelling thereof, and of the Enrolment, and Bill assign'd would not extinguish the Tail; for the Tail executed may be averr'd without shewing the Patent, and Formedon lies after the Tail executed, without shewing the Patent. Br. Patents. pl. 97. cites 32 H. 8.

2. Where a Man brings Debt against the Customer, or Debt is assigned to him to be paid by the King and Tally of Exchequer, he need not shew this Tally to the Court upon his Declaration, as in Debt upon Obligation; for the Debt does not arise only by the Tally, but by the Assignment by the Record, and the Tally is only to deliver to the Customer to take Allowance of it upon his Account. Nota, Br. Monitrans. pl. 8. cites 27 H. 6. 9.

3. A Man can't justify as Servant of the King without shewing Patent. Br. Aid del Roy. pl. 12. cites 33 H. 6. 29.

4. If a Man pleads Letters Patents in the Court where they are enrolled, the Party may plead them * without shewing Deed, and it is sufficient, notwithstanding that they were never pleaded before; quod nota; Per the Justices. Br. Monitrans. pl. 124. cites 21 E. 4. 48, 49. * S. P. Br. Pleadings. pl. 110. cites 21 E. 4. 44. — S. P. But if recorded in

any other Court, he must plead them with a Proffert in Curia, or the Exemplification of them under the Great Seal. Per Holt. 2 Salk. 497. Roberts v. Arthur.

5. Note, If a Man pleads Letters Patents made to the Abbot of St. Alban's, that he shall make Justices of the Peace within his Liberty, and that no other Justices should intermeddle there; and that he was indicted there before the Justices of the Peace of the County, who sat within the Liberty, and therefore a void Indictment; Per Fineux, Chief Just. he shall not shew the Patent. Br. Monitrans. pl. 172. cites 13 H. 7. 14 & 20 H. 7. 6.

6. Where a Man is a Stranger to the Patent, and does not claim any Thing within it, nor does any Act in Right of the Grant, he shall plead the Patent without shewing it; Per Pollard. Br. Monitrans. pl. 172. cites 13 H. 7. 14. and 20 H. 7. 6. Contr. where he claims any Thing by it, or justifies by the Grant lb.

7. Formedon of a Gift of Land by the King by Letters Patents. Fisher said, If a Man loses his Letters Patents, he may have new Letters Patents out of the Chancery, if he shews to the Chancellor that he has lost them, Quære inde; for it seems that he shall have only a Constat, et non negatur ibidem. But 'twas admitted upon the Argument, if he shews the Letters Patents of the Gift of the King or [does] not, but [shews] that he has lost his Letters Patents and has a new Patent, that is intended a Constat, as it seems to me, that in this Case it shall serve him to shew or plead as well as the first Patent. Br. Patents. pl. 58. cites 22 H. 7. 12, 13.

8. In Treipals the Defendant said, that the Place where &c. was 10 Acres of Land, of which the King was seised in Fee in Right of his Crown, and by his Letters Patents granted the Land to the Lady Carew for Term of Life, who leas'd to the Defendant for Years, and averr'd the Life of the first Lessee, and so justified; and it was moved, if the Plea be good without shewing the Letters Patents of the King; and it was held clearly S. C. cited 10 Rep 92.a. Hil. 8. Jac. in Dr. Leyfield's Case.

clearly by Knightly, Montague, and Fitzherbert, that he ought to shew the Letters Patents. But Browne, Willowby and Baldwin eontra. And it seemed by them, that there is a *Diversity* when the *Grantee* of the King *grants over all his Interest*; for there the Patent belongs to the Grantee, and therefore he shall shew them; but when he *grants only Parcel*, it is otherwise &c. D. 29. b. pl. 199. Hill. 28 H. 8. Anon.

9. It was enacted Anno 4 H. 7. cap 9. That no Man should convey Wine into the Realm out of Gascoigne but in English Ships &c. and where the Master and Mariners were English &c. upon Pain of Forfeiture. And H. 8. granted Licence to a Man, Anno 9, That he, his Deputies, Factors, or Assigns, might convey &c. in any Ship whatsoever, *Non Obstante the said Statute*, 600 Tunn of Gascoign-Wine, without mentioning any Thing of the Mariners &c. And by the Statute made Anno 32 H. 8. cap. 14. it is enacted, that the said Statute shall stand in full Force and Virtue, so that from henceforth no Person shall attempt to do contrary to the Tenor and Effect thereof, upon the Pain limited in the said Statute. And one R. was sued by Information in the Exchequer for 40 Tunn imported into the Realm Contra Formam &c. R. pleaded this Licence as Assignee for the 40 Tunns, without shewing the Patent of the King, and also without shewing Deed of Assignment; but he averr'd by Prescription, that there is a Custom among Merchants, that he who has such Licence may assign it by Parol &c. without averring the Life of the first Grantee. And upon this Plea, it was demurr'd in Law. And by the best Opinion the Plea is not good without shewing the Letters Patents. D. 54. a. pl. 17. Mich. 34 H. 8. Richards's Case.

10. The Patentee of the Queen made a Lease of the Lands to another. Per Periam, J. the Lessee ought to shew the Letters Patents; for he deriveth his Interest therefrom; and he said, that if any Books were against his Opinion it was marvellous. Godb. 111. pl. 133. Mich. 28 & 29 Eliz. C. B. Anon.

11. Tho' the Patent is in Court, yet it ought to be pleaded with a Hic in Curia Prolat. 3 Bullt. 58. Trin. 13 Jac. The King v. Capell.

See (M. 2) (Y. c. 4.) Grants to the King. What may be granted
pl. 6. S. 2. or assigned to him.

1. BROOKE makes a Quære, If a Man's Beasts are distrain'd, if he may give them to the King before he has replevy'd them; and says, It seems he cannot. Br. Prerogative. pl. 36.

Br. Grants.

pl. 82. cites

1 H. 8. 29.

That Brian

held the

Grant of an

Office of Fo-

rester in like

Manner in Tail,

Remainder to the King in Fee, is not good, because he can be Officer

to no Man; But that the whole Court held the contrary for the Reason above, and that the Office may

be forfeited. — Grant of an Office is good to the King, tho' he cannot be an Officer; for Office may be

forfeited to him, and he may grant over the Office; and so of Annuity. Br. Prerogative. pl. 125. cites

1 H. 7. 29. Per tot. Cur.

2. If a Man gives Land in Tail, Cum omnibus officiis ea tangentibus, or gives to J. S. an Office with all Lands to the same belonging, the Remainder to the King in Fee; This is a good Remainder (tho' the King cannot be Officer to any Man) because he may grant it over. Br. Done. pl. 51. cites 1 H. 7. 31. Per Brian.

Br. Recogni-
zance. pl. 19.
S. C

3. The King cannot receive a Surrender of Letters Patents to himself, nor Recognizance, but the Chancellor or other Justice shall do it. Br. Prerogative. pl. 135.

4. P. was Collector of the Subsidy granted by Parliament, and by reason thereof was indebted to the Queen; and one B. being indebted to him, P. assign'd the said Debt to the Queen for Parcel of her Debt; upon which Process issued out against B. And now at the Return of the Process, it

was

was moved in Behalf of B. that the Assignment was not good, for that *no Assignment of Debt to the Queen is effectual where the Goods and Lands of the Queen's Debtor are sufficient*; But here Constat de claro that P. is sufficient. And Per Fenner, there is not any Authority in our Law for such Assignments of Debts to the Queen. 4 Le. 80. pl. 170. 29 Eliz. in the Exchequer. Pigot's Case.

5. If A. be bound to B. by Obligation with Condition for the Performance of Covenants, altho' the Covenants, or some of them, be for the Payment of Money, yet the Assignment of such Bonds to the Queen shall not be received; and if it be assign'd, it shall be put out of Court; for *no Bonds shall be assign'd as above, but such as are made for the Payment of Money*. 4 Le. 9. Mich. 33 Eliz. in the Exchequer. Sir John Hawkins v. Chapman.

6. A. and twelve others were possess'd of diverse Trees by the Grant of the Owner of the Soil, and the said A. for and in Satisfaction of a Debt, which he ow'd to the Queen, assign'd to her by Deed inroll'd all the Trees; and the Question was, If the Queen should have by this Assignment all the Trees. Coke, for the Defendant, did agree, that where the Queen came to an entire Thing by Act in Law, as Attainder or other Act in Law, she by her Prerogative shall have the whole; but where she comes to have Part of the Chattle by the Grant of a common Person, he by his Grant shall not prejudice his Companion; and therefore, in that Case, the Queen shall not have her Prerogative. Quære of this Difference: The Bayens did not speak to the Case, but they said it was strong against the Defendant; and they gave him Day to take Advice, if he could say any other Matter. Cro. E. 265. Mich. 33 & 34 Eliz. The Queen v. Fairclough.

7. A Man recover'd Damages in an Action on the Case, and he assign'd Parcel of this Debt to the Queen before Execution, and the Queen thereupon brought a Scire facias. Manwood, Ch. B. and all the Court held clearly, that Parcel or a Moiety of this Debt could not be assign'd over to the Queen. Ow. 2. The Queen v. Allen.

8. 7 Jac. cap. 15. *No Debt shall be assign'd to the King by &c. any Debtor or Accomptant, other than such Debts as did before grow due originally to the King's Debtor or Accomptant, bona fide.*

All Grants and Assignments of Debts to the King &c. contrary to the true Intent of this Act, shall be void.

P. was bound in a Statute of 27 Ed. 1 to Cawboding Intestate; Administration

tion was committed to his Wife, who married F. which F. became bound with others to the King in 600 l. and then he and his Wife did, by Deed inroll'd in the Court of Wards, assign this Statute to the King for Payment of the said Debt of 600 l. to the King, which was payable at certain Days after the Assignment. And it was resolv'd, that this Assignment was good, notwithstanding this Statute; for the Purpose of this Law was, that no Debtor of the King should procure another Man's Debt to be assign'd which was a common Practice; but this was F's own Debt, tho' not to his own Use, which he may himself release and discharge, and by the same Reason may assign. Hob. 255. Breaden v. Coates. — Cro. J. 524. Hill. 16 Jac. S. C. by Name of Fawn's Case.

(Y. c. 5) Grants to the King. Aided or Construed. How.

1. 34 & 35 E. 3. **E** Nadis, that the King shall hold and enjoy all Honours, Lands, and other Hereditaments, which he has obtained since the 4th of February in the 27th Year of his Reign, or shall hereafter obtain, within 7 Years next after the making of this Act, by Bargain, Exchange, or Purchase, notwithstanding any Affidavit, Non-est, or not naming the same Honours &c. or of the Place where they lie, or of any Part thereof, or any other Matter or Cause whatsoever.

The Right of others is saved, save only for Rents, Services, and Rents-sucks.

2. The Words of *Gifts of Subjects made to the King by the Parliament* shall be taken most strong for the King where they have two Intendments; Per Saunders one of the King's Serjeants, who said it was as a Rule. Pl. C. 11. a. Patch. 4 E. 6. in Case of Reniger v. Fogalia.

The Prior of M. was seized of an Advowson and 22 Acres of Land, and 20 H. S.

the King licensed him to appropriate The 21 H. 8. the Bishop who was the Ordinary assented, that after the Church should become void, the Prior might hold it Appropriate. The 27 H. 8. the Incumbent died; so that the Appropriation took Effect, and was united to the Possession of the Rectory Appropriate, and also of the Land out of which Tithes were due to the said Prior in respect of the said Rectory. The Priory is dissolved, and the Impropriation and Lands given to the King by the 31 H. 8. who granted the Impropriation to one, and the Lands to another. 2 Brownl. 25. Priddle v. Napper. — S. C. 11 Rep. 8. b. Mich. 10 Jac. The first Point was, If the Appropriation was good or not? 2dly, If it was not good by the Common Law, Whether the Statute of 35 Eliz. cap. 3. has supplied the Imperfection thereof or not? As to the 2d. Point, (admitting the said Appropriation had been void) it was objected, that this Act of 35 Eliz. had made it good, it being thereby declared, *That all Manors, Lands, Tenements, and Hereditaments, which at any time heretofore were the Possessions of an Abby, Monastery, Priory &c. which after the said 4 Feb. 27. H. 8. were granted or conveyed, or mentioned so to be in or by any Letters Patents whatsoever by H. 8. to any Person &c. were and shall be reputed taken, and adjudged to have been lawfully and perfectly in the actual and real Possession of the said late King, and of his Heirs and Successors, at such time as the same were granted by him.* And where it was answered by the Plaintiff's Counsel, that this Act of 35 Eliz. extends only to Letters Patents made by H. 8. and that the Letters Patents in the Case at Bar were made by Queen Eliz. and therefore out of the Statute of 35 Eliz. it was resolved, and so the Truth is, that this Statute extends not to this Case, but not for the Reason alleged by the Plaintiff's Counsel; For tho' it be true, that Queen Elizabeth granted the Inheritance of the said Rectory, yet it appears by the special Verdict, that H. 8. by Patent indented had demised the said Rectory to W. P. for 21 Years, and this Act of 35 Eliz. provides, *That all Manors &c. mentioned to be granted &c. in or by any Letters Patents whatsoever made by H. 8. to any Person or Persons, Bodies Politick or Corporate, shall be reputed, taken, and adjudged to have been lawfully and perfectly in the Actual and Real Possession of the said King, his Heirs and Successors.* In which Proviso four Things are observable: 1st. The favourable Pleading thereof, viz. *mentioned to be granted*, tho' in Effect Nothing passed by the Grant. 2. The generality of the Words, first, in respect of the Quality of the Letters Patents, viz. *in or by any Letters Patents whatsoever*, be they under the Great Seal, Exchequer Seal, the Court of Augmentation Seal, the Dutchy Seal &c. Secondly, In respect of the Estate or Interest mentioned to pass by the Letters Patents without Restriction to any in certain; So that if they purport Grant for Life or Years, the Statute has as great Operation as to the Proviso, as if the Patents had purported a Tail or Fee. Thirdly, the Generality of the Proviso; For it extends not only to make the Grant good, but also to vest the Manors &c. of the late Abbots &c. in the Actual and Real Possession of H. 8. and likewise (fourthly) in his Heirs and Successors. And so the Proviso extends to three other Cases. 1st. Where any Lands &c. came to the Hands or Possession of the said late King H. 8. 2dly, Or which were put in Charge to or for his Highness in his Court of Exchequer, or any other Court of his Majesty's Revenue. 3dly, Or by any Auditor or other Officer of the said late King. And in every one of those Cases, the Proviso has as great Operation as in Cases of Letters Patents, as to the vesting such Lands &c. in the King, his Heirs and Successors; but yet it was resolved, That this Act of 35 Eliz. extends not to this Case; For the Proviso has a Qualification or Restraint which has not been mentioned before at the Bar, viz. *That in the said four Cases such Lands &c. shall be reputed, taken &c. in the Actual &c. Possession of the King, his Heirs &c. at such time as the same did so come to his Hands or Possession, or were so put in Charge, or granted, or conveyed by H. 8. as aforesaid, notwithstanding* 1st. *any Defect &c. of or in any Surrender, Grant, or Conveyance of the said Manors &c. or any Part thereof, to the said H. 8.* 2dly, *Or any other Matter or Cause whatsoever by which his Highness was, or might have been intitled to the same.* So that the Scope of the Act was to vest in H. 8. all the Lands &c. which the Abbots &c. had, notwithstanding the Defects aforesaid. But if the said Appropriation was void, and was not given to the King by the Statutes of Monasteries, then the Prior had nothing in the said Rectory besides the Advowson and Jus Presentandi. Notwithstanding which this Act of 35 Eliz. has great Effect; For since the 31 H. 8. gives not to the King any Monasteries &c. but such only as had been surrendered, granted &c. or dissolved, this of 35 has supplied the Defect &c. of a Surrender, as of an Insufficient Surrender, Grant, or Conveyance, so that be there any Surrender &c. or not, or be it, if any, sufficient or not, the said Lands &c. are actually vested in the King, his Heirs &c. 2dly, If the Abbot &c. had been dissolved &c. where an Office, Scire Facias, Seizure &c. had been requisite to vest the Possession in the King, there the last Words, viz. *or any other Matter or Cause whatsoever by which his Highness was or might have been intitled to the same*, supplies all such Means whereby the King might lawfully have been intitled and put in Actual Possession. But tho' there be a Defect in the Appropriation, yet if the Rectory be in Reputation appropriated, and been used as such, it was given to the King by the Statute 27 H. 8. cap. 38. or 31 H. 8. cap. 13. Note, that in the Statute of Monasteries there is a saving of Rights &c. but the Founders, Donors &c. are excepted out of the Saving; so that they are bound by the Body of the Act. 11 Rep. 8. b. 11 b. Mich. 10 Jac. Priddle v. Napper.

4. 43 Eliz. 1. Enacts, that all Grants made to the Queen since the 8th of February in the 27th Year of her Reign, (except by Ecclesiastical Persons, or Bodies Politick, not having Power or Ability to make such Grants) are confirmed.

The Right of all others is saved, except of the Parties and Privies to such Grants.

(Z. c) Grant to the King. How the Grant may be. In Sec (B. d) what Cases without Record.

1. **A** Man cannot grant Land in Fee to the King without Matter of Record. Contra. 50 Aff. 1. It was held, that if a Man will give Land to the King and to his Heirs, the which he will vest in his Body Natural, and not in his Body Politick, the King cannot take it by Livery, but it ought to be by Matter of Record. Pl. C. 213 b Mich. 4 Eliz. in the Case of the Duchy of Lancaster. — The Prerogative of the King requires Matter of Record to bring Lands to the Hands of the King as well as to toll or remove it from him; Per all the Justices. Pl. C. 484. b. Mich. 17 & 18 Eliz. in Case of Nicholls v. Nicholls.

2. A Man cannot grant the Services of his Tenant in Fee, or for Life, to the King without Matter of Record. Contra. 50 Aff. 1.

3. The King cannot be infeoffed but by Deed inrolled of Record; S. P. Br. Prerogative, pl. 93. cites 7 E. 4. 16. — For no Livery can be made to him; Quod nota bene. Br. Prerogative, pl. 66. cites 5. E. 4. 7.

Impedit it was agreed, that Feoffment made to the Use of the King of a Manor, vests nothing in him; For he cannot take unless by Matter of Record; For he cannot have Feoffees to his Use. Br. Prerogative, pl. 41. cites 21 H. 7. 21.

4. No Parlane shall bind the King, and he cannot take any thing but by Matter of Record, as by Deed inrolled. Brooke says Quære; For others are of a contrary Opinion. Br. Prerogative, pl. 70. cites 14 E. 4. 2.

of Goods without Deed as some held, but Contra it seems of Land clearly; and Gift to the King of Chattels is good as it seems clearly. Br. Prerogative, pl. 36. cites 37 H. 6. 11 — Br. Done, pl. 10. cites S. C.

5. The King cannot take Land by Gift in Possession or in Remainder unless by Deed inrolled; and otherwise it is by way of Conclusion, As where the Tenant in Fee Simple prays Aid of the King, alleging that he holds for Term of his Life, Remainder to the King. Br. Prerogative, pl. 56. cites 1 H. 7. 28.

6. If a Man gives Land in Tail, the Remainder to the King, this Remainder shall not pass to him before the Deed be inrolled, and when it is inrolled it shall pass Ab initio; and so be that it shall not pass by Livery to the Tenant in Tail, and yet it shall pass by the Inrolment after. Br. Prerogative, pl. 57. cites 1 H. 7. 30, 31. per Brian and Collow.

7. The King cannot take a Surrender without Matter of Record; Per Whiddon and Portman J. Pl. C. 105. a. Mich. 2 M. 1. in Case of Fulmeriton v. Steward. Keeling said, it had been adjudged, that a Surrender of a

Copyholder to the King, Lord of a Manor, was good without Matter of Record. Keb. 728 Patch. 16 Car. 2. in Case of Lee v. Boothby

8. If A. makes a Feoffment to the King of Lands, which is not recorded, the King takes nothing by this Deed. If an Escheator finds an Office of this Feoffment made as it were, and not recorded, and returns the same into Chancery; If the Land be in the King's Hands, the Chancellor upon a Motion will, by a Superfeudas, restore A. to the Land. If the King

King has granted it to another, a Scire facias shall be awarded against the Patentee, and the Chancellor shall restore A. For it appears in the Chancery, that the said Office, Patent, and Deed are all void. Jenk. 123. pl. 50.

(A. d) *What shall be said a sufficient Record.*

* S. P. Br

Tail & Do-
nes Sec. pl.

38 cites 35

H. 8 that

the Tail by

this is not

Extinct

S. C. cited D.

355. a. pl. 37.

Marg. —

Yelv. 30.

Hill. 45 E.

liz. S. C. ad-

judged ac-

cordingly.

For the King

takes not by

the Inrolment,

but by the Deed,

so that the Deed

is the Prin-

cipal, and the

Inrolment but

Testimony that

the Deed is of

Record; And tho'

it is usually said

in the

Books, that the

King cannot take

but by Deed in-

rolled, this is to

be intended only

that the Deed

made to the King

be recorded, yet

it is not sufficient

to make Deed of

Land to the King,

and

cast it into the

Exchequer, or

other Court of

Record, or after

that such Deed

is made, to leave

it in

Court, but the

Party ought to

deliver it of

Record in Court,

and to be in-

rolled by the

Officer. *Quod*

venit f. s. tali

Die, and delivered

such Deed to the

Use of the King,

and then this

countervails

Inrolment.

Per tot Cur.

Nullo contradicente.

1. **I**F * Tenant in Tail, or any other particular Tenant, surrenders their Letters Patents in Chancery to be cancelled, there needs not any other Inrolment of this Surrender; For the Remembrance made of it is sufficient Record to pass it to the King. *Hich. 42. 43. Cl. B. R. per Dopham agreed.*

2. So if Tenant in Tail surrender his Estate per Chartam suam de Libertam de Recordo in the Exchequer, this is sufficient without Inrolment thereof; For this is a sufficient Matter of Record to intitle the King. *D. 42. 43. Cl. B. R. between Abraham and Wilcks, per Curiam, preter Dopham.*

For the King takes not by the Inrolment, but by the Deed, so that the Deed is the Principal, and the Inrolment but Testimony that the Deed is of Record; And tho' it is usually said in the Books, that the King cannot take but by Deed inrolled, this is to be intended only that the Deed made to the King be recorded, yet it is not sufficient to make Deed of Land to the King, and cast it into the Exchequer, or other Court of Record, or after that such Deed is made, to leave it in Court, but the Party ought to deliver it of Record in Court, and to be inrolled by the Officer. *Quod venit f. s. tali Die, and delivered such Deed to the Use of the King, and then this countervails Inrolment.*

And the

Prayer of the

Lessor to

have it in-

rolled was

indorsed,

but not in-

rolled, and

yet it was

adjudged

against the

King, that the

Grant was

not good. See

Lane 31. 35

& 36 a. the

Argu-

ments of the

Counsel and

of the Court

6 Jac. and

Trin. 7 Jac.

in the Exchequer.

S. C.

3. If a Man makes Lease for Years of Land to the King, and after acknowledges it before certain Commissioners appointed for the same Purpose, and the Lessor prays that it be inrolled, and the Commissioners return it accordingly, yet the King shall take nothing by this Lease without Inrolment; For this is not sufficient Record to intitle the King. *Cr. 8 Ja. B. Scacc. Sir Edward Dimock's Case. Adjudged.*

For the King takes not by the Inrolment, but by the Deed, so that the Deed is the Principal, and the Inrolment but Testimony that the Deed is of Record; And tho' it is usually said in the Books, that the King cannot take but by Deed inrolled, this is to be intended only that the Deed made to the King be recorded, yet it is not sufficient to make Deed of Land to the King, and cast it into the Exchequer, or other Court of Record, or after that such Deed is made, to leave it in Court, but the Party ought to deliver it of Record in Court, and to be inrolled by the Officer. *Quod venit f. s. tali Die, and delivered such Deed to the Use of the King, and then this countervails Inrolment.*

And the

Prayer of the

Lessor to

have it in-

rolled was

indorsed,

but not in-

rolled, and

yet it was

adjudged

against the

King, that the

Grant was

not good. See

Lane 31. 35

& 36 a. the

Argu-

ments of the

Counsel and

of the Court

6 Jac. and

Trin. 7 Jac.

in the Exchequer.

S. C.

4. If Lessee for the Life of the King renders and delivers up his Letters Patents in the Chancery Ad Cancellandum. This without more is not any sufficient Record to intitle the King to it. *D. 5 Ja. Scacc. Sir Robert Johnson's Case.*

5. A Deed of Gift Bargain and Sale was made to E. 6. by the late Duke of Somerset in Fee, and was acknowledged to be inrolled before a Master in Chancery, and also before the Chancellor of the Augmentations, and delivered into Court, and there put into a Chest, but not yet inrolled; The Attorney General moved it might lawfully be enrolled now, and thereby the Lands to vest in the Queen as Heir, or Purchaser; and it seemed by the Opinions of Wray, Dyer, Bell, and Manwood, that it cannot be to vest any Interest in the Queen, according to 5 & 7 E. 4. & Br. Tit. Done 37 H. 6. D. 355. pl. 37. Hill. 19. Eliz. Anon.

And 220 pl.

245. Patch.

32. Eliz. A-

non. S. P. Br

there it was

held that the

Land passed

without In-

rolment, and

cited the O-

pinion of

Belknap, 49

E. 3. 5. 2- H. 6. 11.

and also this Case

of D. 355. but

says, That Wray,

Dyer, Bell, and

Manwood

were of this same

Opinion; and it

was further moved,

if it might be yet

inrolled or not,

and it was

made and acknow-

ledged in the

Time of another

King, and he being

dead it is not to

be inrolled —

And D. 355. Marg

pl. 37. says, That

Sir Tho. Egerton,

Master of the

Rolls in Mr Ald-

worth's Reading

in Lincoln's Inn

in Lent 38 Eliz

said, That when

he was Attorney,

he had Occasion

to demand the

Opinions of

Wray and Man-

wood Chief J.

and Chief Baron,

who then denied

their Opinion

ever to have been

as Dyer here has

reported; and

they said, That

there is no

Conclusion that

the King cannot

take but by

Matters of

Record; For he

said, that the

King is intitled

in many Things

wherein he is

intitled in the

Rolls, and in the

Memorandum

in the Exchequer;

and yet these are

Titles to the

the Queen. —

About the 35th

of Eliz. this Case

came in Question

again between

the * Dean and

Canon

Canons of Windsor and Middlemore, and by the Resolution of all the Justices of England, it was agreed, that the Deed might be inrolled now, and so it was, and so Middlemore was cuffed of his Term; and it was also debated in the Parliament House, and there also agreed accordingly; And it was also resolved by all the Justices, that the Acknowledgment of the Deed before the Master in Chancery, and the Delivery thereof into the Augmentation Court, does not make it a sufficient Record before Inrolment, to vest the Interest in the King; But when it is inrolled now, with another Date, it vests the Interest in the King with Relation; For all Persons are supposed to say, that it was not inrolled according to the Date, as appears in the Case of *Lutford v. Gritton*, Pl. C. 419. b. But the contrary is held at this Day; For if it be in *Filicis*, or any where among the Memoranda of the Exchequer, it suffices for the King. D. 355. Marg. pl. 37. — *S. C. cited Mo. 6-6 pl. 62. by Lord K. Egerton, and said it was resolved upon Conference, that the King, by the bringing and leaving of the Deed in Court, took well enough without Inrolment. — *Hutt. 1. Patch 15 sic. Combes v. Inwood*, the Court delivered their Opinion, that if there was a Deed by which the Land then in Question was conveyed to H. S. and that was brought into the Court of Augmentation, although this Deed be not found nor inrolled, yet it is a sufficient Record to intitle the King, and it is a Record by being brought into Court, and there reversed to be inrolled; And the Report in D. 355. 19. Eliz. was not as it is there reported; For it was for *Borme's Inn*, and it was adjudged a good Conveyance.

A Deed to the King of certain Land acknowledged before a Judge, or Master in Chancery, and delivered into Court, but not recorded by the Neglect of the King's Officer, is good to the King. *Jenk. 124 in pl. 82.*

(B. d.) *How the King may take; where without Record. Chattels.* See (Z. c.)

If a Man devise Goods or Money to the King by Parol, yet the King shall have it. 40. Aff. 35. Tr. 8. Ja. Scacc. per *Bromley*. *See the Kingly Court*, and without Deed or Testament, the King upon Suggestion of this shall have Action, and it was awarded by Judgment against W. C. who was Executor of R. C. his Father, who had devised his Goods to the King by Parol, that Execution shall be made of the Goods of the Deceased, in whatever Hands they were found, and against the Occupiers; For the Occupation of Goods of the King shall charge him against the Heir, and The Testator had devised to the King 1000 Marks which were in a Coffin, The Executor said, That at the Time of the Death of the Testator he was at London, and never had occupied the Goods of the King, But his Mother had made full Administration, and W. after her Death &c. occupied the Goods of her Father, whose Heir, that he occupied the Goods of R. And after he was examined upon Oath and confessed that he had occupied two Manors, which R. and his Father had, and paid before hand, by which it was awarded, that the King have Execution of the 1000 Marks of the Goods of the Deceased, and that first Execution shall be made of the Farms which W. had confessed, and the Termment that he had held against his own Conscience shall be held for Nil. Br. *Surmise*, pl. 5. cites 40. Aff. 35. — Br. *Prerogative* pl. 32. S. C. — Br. *Prerogative*, pl. 145. cites S. C.

2. If a Man lease Land for Years to the King by Deed, the King shall take nothing by it without Inrolment of the Deed, Because it is Real. Tr. 8. Ja. Scacc. *Sir Edward Dinock's Case* adjudged. *And that it be only a Chancery Real, yet Chancery Real participate*

partate in divers Qualities with Inheritances and Freeholds, Per *Bromley Baron* Lane 61. S. C.

3. Lessee for Years cannot surrender to the King in Reversion without Deed inrolled. S. P. by *Altham, Baron* Lane 61.

in *Sir Edward Dinock's Case*

4. If a Bishop lease Land for Years to the King by Deed inrolled, and this is confirmed by the Dean and Chapter. This Confirmation is good without Inrolment; Because this passes no Interest, but is only an Assent. Tr. 8. Ja. Scacc. *Sir Edward Dinock's Case*, Per *Curiam*. Lane 31. 35. & 60 argued and adjudged.

5. If Lessee for Years of the King surrenders his Patent to the King in the Chancery ad Cancellandum, and pays the Fees, yet the Estate is not surrendered before Record or Vakat made thereof, enter v. D. 11. Ja. B. R. *St. Savour's Case*. Dill. 11. Ja. B. *Atreham's Case*. Per 10 Rep 6. b. Trin 11. Jac in the Chancery, and said that it was not a Surrender of the Patent.

6. It was resolved, that the Delivery of Letters Patents into Chancery, to be cancelled by the Heir of the Party, without Writing was sufficient, and as much as they ought to do, and it belongs to the Lord Chancellor, or his Officers to cancel them, and every one ought to do that which he is bound to.

S. P. Br.

Prerogative,
pl. 40. cites
31. H. 7. 19.
quod fuit
concessum.

Brooke says, and so see that the King shall take a Chose in Action by Grant of another, and may sue in his own Name; Contra of a Common Person; And so it seems that the King may take Chattle or Chose in Action, which is not Frank-tenement, without Deed inrolled Br. Prerogative pl. 40. cites 31 H. 7. 19.

6. An Obligation may be granted to the King by the Obligee, tho' it be a Chose en Action, and the King may bring an Action upon it, tho' the Grant be by Deed without Inrolment. Br. Chose en Action. pl. 4. cites 21 H. 7. 19.

7. An Use cannot vest in the King by Will or otherwise, without Matter of Record, any more than Frank-tenement, or Inheritance &c. D. 74. a. pl. 17. Mich. 6. E. 6. in a Case of Exceptions taken to an Information.

(B. d. 2) Entry by the King, Congeable in what Cases.

1. **A** Tenant for Life, the Remainder to the Heir in Ward of the King. If A. had aliened, the King might have entered, and if a Condition, which descended to such Heir, had been broken, the King might have entered for the Heir, quod nota; but Brooke says, It seems that the Matter ought to be found by Office. Br. Entre Cong. pl. 126. cites 19 E. 3. & Fitzh. Garde. 113, 114.

2. A Man leased for Life rendring Rent with Re-entry. The Tenant committed Felony, and Process issued to the Exigent; and Mean between the Exigent awarded, and the Outlawry, the Lessor re-entered for Non-payment, and well, because the King had not entered, nor was seised before it. Br. Entre Cong. pl. 114. cites 27 Aff. 50.

Put where a
Common Per-
son is put to
his Action, As
for Waff,

3. Where a Common Person may enter for Escheat Ward, Mortmain &c. if such Matter be found for the King by his Office, the King may enter. Br. Entre Cong. pl. 93. cites 12 H. 7. 20, 21.

Cessavit, Debt upon Recognizance for a Condition broken &c. there if such Matter be found for the King, he cannot enter, but it is put to his Scire facias; Quod nota; per Frowike, Mordant, and others. Br. Entre Cong. pl. 93. cites 2 H. 7. 20, 21 — Br. Prerogative, pl. 63. cites 12 H. 7. 19 S. C.

4. By the Statute 10 H. 4. the Possessions of the Dutchy were separated from the Possessions of the Crown; so that in all Things concerning these Possessions the King must demean himself as a Subject, and not with his Prerogatives as King. But a Difference has been held upon the said Statute, That where the King, as Duke of Lancaster is to do any Action inseparable in Person, there he shall enjoy his Prerogative to excuse his Person; But in Actions concerning the Possessions of the Dutchy, he shall have such Advantage only as the Duke of Lancaster had; therefore upon great Debate in the Dutchy Court, it was adjudged, That were the King made a Lease of Dutchy Lands, reserving Rent with a Clause of Re-entry &c. that he must demand the Rent before he can re-enter; because it is a material Advantage to the Tenant, that the Rent should be demanded before he should receive any Damage which might happen for Non-payment; And that Demand is a Thing which may be made by an Attorney. Arg. Mo. 161. in the Case of Saffron-Walden. — cites it as * Bonny's Case.

* Mo. 189.
S. C. ad-
judged

5. Tho' by the Statute 33 H. 8. cap. 20. the Lands of Persons attainted of Treason shall be in Actual Possession of the King, without Office found, yet if a Disseisee is attainted of High Treason, the King hath only a Right by the Attainder, and shall not have the Possession without a Scire facias, or Seifure at the least; Because when a Stranger is seised at the Time of the Office found, the King shall not be in Possession till Seifure, and with this agrees Stamf. Prerog. 54. 17 E. 3. 10. 29 Aff. 30. 21. E. 4. 1. Besides, all Possessions &c. are saved by the said Act, as if the Act had

not been made, and therefore the Possessions of the *Disseisor* is saved thereby, in the same Manner as if a special Office had been found by the Common Law. 3 Rep. 11. Trin. 26. Eliz. in the Exchequer, the second Resolution in Dowtie's Case.

The Queen granted Lands reserving a Fee-Farm Rent, with a Condition of Re-entry for Non-payment, and afterwards the Queen granted this Rent to J. S. in Fee; the Rent was behind; and adjudged, That the Queen shall Not Re-enter, because by that Means she would defeat her own Grant, which would be a Tort to the Grantee of the Rent. Cro. Eliz. 69. pl. 23. Mich. 29 & 30 Eliz. Cranmer's Case.

(B. d. 3) Entry upon the King, or his Patentee. What is to be done.

1. IF the King seises the Ward which belongs to another Person, yet he cannot enter at full Age, but shall sue to the King. Br. Entry Congeable, pl. 62. cites 26 Ail. 57. Per Thorp & tot. Cur.

2 If the King be seised by Reason of an ill Office, the Party who is ousted shall have Affise; Per Huls clearly. Br. Office devant &c. pl. 7. cites 7 H. 4. 46.

As where it is found that the Tenant of the King died seised of

my Land, yet his Heir shall have Livery, and I cannot enter before Livery; but after Livery Affise, and shall be no longer bound by the Office; for the King by his Seizure shall not have Franktenement, but only Chattel, and so the Franktenement not out of the Party; and therefore otherwise it seems where King by Office is intitled to the Fee, and gives it over, there it seems that the Party cannot enter. Ibid.

3. Where the Escheator seises Colore Officii, or by Reason of an Office, which is insufficient, and does not intitle the King, As by Outlawry in an Action Personal &c. there the Entry of the Tenant is sufficient upon the Escheator; for the King ought not to seise but to take the Profits. Br. Entry Congeable, pl. 1. cites 9 H. 6. 20.

So where it is found that J. N. who is outlawed in Trespass, was seised of my Land,

and he enters, I may oust him. Ibid.——Contra where the Escheator seises by Writ where the King has no Title, there the Party cannot enter; note the Diversity. Ibid.

4. Where the King is intitled by double Matter of Record, a Man has no Remedy unless by Petition. Br. Entre Cong. pl. 123. cites 10 H. 6. 15

As if a Man be attainted of Treason or Felony, and it is found by Office that he was seised at the Time &c. of such Land &c. and the King grants it over, he who Right has cannot enter, nor have Action, nor Traverse to the Office, but is put to his Petition. Br. Entre Cong. pl. 128. cites 10 H. 6. 15.——And it was agreed, that if the Escheator or other enters to the Use of the King without Title, yet the Party can't enter; for the King is seised, and yet the King is no Disseisor. Br. Entre Cong. pl. 128. cites 35 H. 6. 61.——But if the King grants it over, the Party may enter upon the Patentee. Br. Entre Cong. pl. 128. cites 35 H. 6. 61.——But where the King is intitled by Office, and grants it over, tho' it be false Office, the Party cannot enter upon the Patentee, but is put to his Traverse of the Office; Per Lacon & Needham; & non Negatur. Br. Entre Cong. pl. 128. cites 35 H. 6. 61.——S. P. Br. Entre Cong. pl. 5. cites 35 H. 6. 60——S. P. Br. Entre Cong. pl. 96. cites 4 E. 4. 21. 22. 25——S. P. Br. Traverse de Office, pl. 32. cites S. C.——S. P. Br. Traverse de Office, pl. 52. cites 10 H. 6. 15. And Brooke says, Note the Diversity thereof; for where he cannot enter upon the King by Reason of a Record for the King, which stands in Force, there he cannot enter upon the Patentee; and nota bene; for the Title remains, and the Patentee is in by the King.——S. P. But where the King is intitled to Land by Office, and another has Rent-charge or Common out of it, and the King after grants the Land to J. S. there he who has Rent-charge may distrain or use his Common, for the Grantee nor the Commoner is not out of Possession by such Office. Contra, if he has Title to the Land; note the Difference. Ibid.

5. It was enacted by Parliament, That the Lord Hungerford should be attainted of Treason, and forfeit his Lands, with a Proviso, that of such Lands whereof he was seised to the Use of others, that Gentry who Use might enter; yet where the King is seised, he cannot enter upon him, but shall sue Out for the same. And so it seems that the King is not bound by any Statute, unless by express Words of the King; As if it had been that he

might

might enter as well upon the Possession of the King as upon others. Br. Entre Cong. pl. 134. cites 4 E. 4. 21.

So if a Man
gives Land
rendering
Rent, with
Clause of
Re-entry,
and the Land comes to the King, and the Rent is Arrear, the Donor can't enter upon the Possession of the King. Br. Entre Cong. pl. 97. cites 5 E. 4. 4.

6. If a *Man disseises the King's Tenant*, and the *Disseisee makes continual Claim*, and the *Disseisor dies seised*, and *Office is found* for the King, by which he seises, the *Disseisee* cannot enter upon the Possession of the King by the continual Claim. Br. Entre Cong. pl. 97. cites 5 E. 4. 4.

7. A Man can't enter *upon the King and another*; and this seems to be, where the King and another are *jointly seised*. Br. Entre Cong. pl. 101. cites 14 E. 4. 2.

8. It was agreed for Law, That if *Land escheats to the King*, which is in *Lease for Years*, or *charged with a Rent-charge*, and *Office is found* for the King of the Escheat, [but] the *Lease or Grant not found* in the Office, the *Lessee* cannot enter, nor the *Grantee* cannot distrain; but if the *King grants the Land over*, the *Lessee* may enter, and the *Grantee* may distrain. Br. Entre Cong. pl. 125. cites 33 H. 8.

9. But a Man who *claims Franktenement* in the Land, can't enter without *traversing the Office*, as it seems. Br. Entre Cong. pl. 125. cites 33 H. 8.

(B. d. 4) *Seisin of the King*. In what Cases the King shall be said to be seised or possess'd. And of what Things he may be put out of Possession.

Br. Refeiser, 1. pl. 10. cites S. C.

THE King seised the Possession of a Prior Alien in Time of War; and therefore the King has Possession there, and not only the Profits. Br. Seisin, pl. 11. cites 21 E. 3. 44.

2. The King shall not be said seised by *Seisin of his Servant*, unless it be in his Advantage, and by his own Agreement. Br. Error, pl. 130. cites 39 Aff. 18.

Br. Seisin, pl. 57. (bis) cites 5 E. 4. 4.

3. None can gain *Franktenement* by any Entry made upon the Possession of the King, or upon *Farmer of the King*; for a Man by Entry may disseise a common Person, but not the King. Br. Prerogative, pl. 79. cites 2 H. 4. 7.

But of Things Local he cannot have Action, As Precipe

4. The King may be put out of Possession of *Things Transitory*, and shall have thereof Action, As *Ravishment of Ward*, *Quare Impedit* &c. Br. Prerogative, pl. 55. cites 1 H. 7. 19. and 4 H. 7. 1.

quod redant, Ejection of Ward, and the like; for of those he cannot be put out of Possession. Ibid. — And so see elsewhere, that of *Things transitory* the King shall be adjudged in Possession without Office, As *Ward*, *Villein*, *Stray*, *Heriot* &c. and of those he may be put of Possession. Ibid. — But of *Things Local or Permanent*, as of Land &c. it appears there, and 4 H. 7. 1. that the King is not in Possession till Office found; and there, when Office is found, he cannot be put of Possession; quod nota. Ibid.

And where it is found that his Tenant ceas'd by two Years, he shall have Scire facias, and is not in Possession of the Land. Contra of Office of Alienation of Mortmain, or of Escheat; note the Difference. Ibid.

5. Where the King is intitled to [Land by Reason of] *Waste done by his Tenant for Life*, he is not in Possession of the Land, but shall have *Scire facias*. Br. Scire facias, pl. 122. cites 14 H. 7. 23.

But Brook makes a Quere if the Ancestor of the King

6. Where a common Person may lawfully enter by any Title, there if such Title be found for the King by an Office, the King shall be adjudged in Possession without *Scire facias* against the Tenant; but where a common Person by his Title or Matter cannot enter, but is put to his Action,

tion, *as in Case of Cessavit or Wast*, there if such Matter be found for the King by Office, he is not in Possession by the Office, but shall have Scire facias against the Tenant to give him Answer ; note the Difference. Br. Scire facias, pl. 143. cites 21 H. 7. 18.

Tenant in Tail had been continued, it the King being now Heir to it

might be in Possession by Office found thereof, or shall have Scire facias in Nature of Formedon, or Cui in Vita. It seems that he shall have Scire facias. Br. Scire facias, pl. 143. cites 21 H. 7. 18.

7. Where *Cestuy que Use is attainted of Treason, and it is enacted by Parliament that he shall forfeit his Land in Possession and in Use*, there the King is only a Purchaser. Br. Livery, pl. 58. cites 29 H. 8.

Contra if he had been sole feoffor, and had been attainted

ed by the Common Law ; for there the King has the Land as King. Ibid

8. By Seizure of the Land of *Tenant in Tail, or for Life, who is attainted of Felony*, the King has the Possession, and not the Profits only. Br. Releifer. pl. 10. cites Vet. N. B. Tit. Escheat.

So it seems of Lands, seized into the Hands of the King for

Alienation without Licence, where the Lands are *held of the King in Capite*. Ibid. — So it seems elsewhere of a *Ward*. Ibid. — *And of Anne, die et waste*; but quare of this. Ibid. — But upon *Outlawry in personal Actions* the King shall have only the Profits. Ibid. — Br. Seisin. pl. 9. cites S. C.

9. If the King's *Tenant for Life dies*, the Franktenement in Law is in the King immediately. Per Brown. Pl. C. 229. b. 3 Eliz. in the Case of Willion v. Barkley.

So if the Tenant of the King dies without Heir, the Possession

in Law is immediately in the King without Office ; for *Office is not requisite but where the King shall take thereby*. As if the King makes a *Gift in Tail upon Condition*, and the Condition is broken, there it ought to be found by Office. Per Brown. Pl. C. 229. b. 3 Eliz. in the Case of Willion v. Lord Barkley.

(C. d) Quo Warranto. Of what * Things it lies.

See Hundred (E.)

* See Britton. cap. 19

1. A Quo Warranto lies of the Wreck of the Sea, as appears Among the Petitions in Parliament of 18 E. 1. Fo. 6.

2. The Quo Warranto was framed for *Franchises which belong to the Crown*; and such as the Subject has are derived from the Crown, *Liberates Regales ad coronam spectantes ex Concessione regum a Corona exierunt*. 2 Inst. 496.

3. Quo Warranto lies not of such *Liberties as do not lie in Claim*; as *Felon's Goods &c.* which lies only in Point of Charter. Per Shute, J. who said it had been so holden in a Reading upon the Statute of Quo Warranto, supposed to be Frowick's. 3 Le. 184. pl. 235. Mich. 29 Eliz. B. R. in Sir Gervase Clifton's Case.

4. Quo Warranto against the Lord of a Manor to know *by what Authority the Defendant holds a Court Baron*. It was objected, that it was incident to the Manor, and is not any *Liberty which the King may have distinct from the Manor*, and being a *Matter of Common Right* the King cannot have a Quo Warranto thereof. And of that Opinion was Fleming. Ch. J. Fenner doubted. But Yelverton, Williams and Croke held, That a Quo Warranto well lies ; for it is a *Matter of Right to hold Courts, and to administer Justice, and to hold Plea, and to draw Assemblies of Men together, and to swear Officers*; which if any doth without Right, he is to render an Account thereof; and therefore a Quo Warranto lies to shew by what Title he holds it. But if he there intitles himself to the Manor, he needs not then shew that he is to have a Court Baron, for that is incident thereto. And here the Judgment is not, That the King shall have ; because it is not any such Franchise as the King may have ; but it is, That the Defendant shall be ousted of that Liberty. Cro. J. 259. Mich. 8 Jac. B. R. The King v. Stanton.

5. A Quo Warranto was brought for continuing a Forest in a Court of Swainmote. The Defendant made his Claim by a Charter granted by H. 2 but did not shew it. But Coke, Ch. J. and Doderidge, J. that no Subject can have a Forest; A Swainmote-Court, Doderidge said, a Subject may have, but not a Forest; because none can make a Justice in Eyre but the King. 2 Bull. 295. Mich. 12 Jac. The King v. Briggs.

6. If Markets were kept without the King's Grant, a Quo Warranto lay against those who continued them; and the People that frequented such Markets were punishable by Fine. Arg. 3 Mod. 127.

Serj Hawk-
ins says, It
is manifest,
That this
Statute ex-
tends to all
Information,
whatsoever
exhibited by
the Master of
the Crown-
Office; and
that tho' it
may be ob-
jected, that
an Informa-
tion in the
Nature of a
Quo War-
ranto, being a

7. 4 & 5 W. & M. cap. 18. S. 3. *The Clerk of the Crown in the Court of King's Bench, shall not, without express Order given in open Court, give any Information for any Trespas or Misdemeanor before he has taken a Recognizance from the Person procuring such Information to be enter'd into to the Person against whom it is exhibited in the Penalty of 20 l. that he will effectually prevent such Information, and abide by and observe such Orders as the Court shall direct. And if the Person against whom such Information is exhibited shall appear and plead to Issue, and the Prosecutor pay out at his own Costs, within a Year, procure it to be try'd; or if a Verdict falls for the Defendant, or if the Informer procures a Noli Prosequi, the Court is authoriz'd to award the Defendant his Costs, unless the Judge, before whom such Information is try'd, shall at the Trial certify upon Record, that there was reasonable Cause for such Information; and if the Informer pay not, within three Months after the Costs tax'd and Demand made, pay to the Defendant the said Costs, the Defendant shall have the Benefit of the said Recognizance.*

proper Means to try a Right, is not within the Meaning of the Statute, which now being, *Prosequi, Recusari, and other Misdemeanors* may be reasonably constru'd such other Misdemeanors only to be of an inferior Nature, like to those specified, which are generally wrangling and frivolous cases; yet being this is a Remedial Law, and therefore ought to be largely constru'd, and such Informations may be as venacious as any other, and always suppose an Usurpation of some Franchise, and every such Usurpation is certainly a Misdemeanor. It hath been settled, that this Statute doth extend to them. 2 Hawk. Pl. C. 262. cap. 26. S. 7.

8. It was moved for Leave to file an *Information against the Mayor and Common Council of Hertford*, in the Name of Sir Samuel Aithtree, to know by what Warrant they admitted *Foreigners and Strangers to the Freedom of the Town*; alledging, that this was no Quo Warranto in the Name or at the Prosecution of the King, but only a *Method to try a Right*, Whether the Mayor and Common-Council could, contrary to the express Words of the Charter, as it appear'd, admit those to the Freedom of the Town who were Strangers and not Inhabitants therein; and produced 4 or 5 Precedents in the Time of King Charles I. After several Motions, the Court gave Leave to file an Information, because the *injur'd Freeman of the Town could have no other Way to remedy themselves*, or to try their Right. In this Case, Holt said, that a Quo Warranto is in the Nature of a *Writ of Right*, to which the Defendant can have no Plea but to *justify or disclaim*, and can't plead *Not Guilty*; and that Judgment both for and against the King is final. But Judgment in an Information in the Nature of a Quo Warranto, if against the Defendant, is final, but not if against the King; and that in this Case the Right is in the Corporation, and the Execution only in the Mayor and Aldermen. 12 Mod. 225. Mich. 10 W. 3. Anon.—cites 1 Sid. 86.—9 Co. 28. a. — 2 Inst. 282.

(C. d. 2) Quo Warranto. Of what Thing it lies.
By what Words.

1. **Q**UO Warranto; by this Word (*Toll*) he claimed *Tollage* of his *Subj.* & *Subj.* in *Leas*; and by Word ** (Tern)* he claimed *their Prerog.* and by the Word (*Sake*) he claimed *Suit* of his *Tenants*, and by the Word (*Sake*) he claimed *Consuance of Pleas* of his *Tenants*, and by the Word (*Murder*) he claimed *to have Amercements of Murderers*, and by the Word *4 (Gravel)* he claimed *Ore found in his Soil*. Br. Quo Warranto. pl. 2. cites It. Not. 19.

which in Somn. Gloss. signifies *Municipium Sobol'm*, and in *Specim. Glor.* the Word is *Tern, Tern, Tern*, and *Theam* accordingly. And see Keilw. 145. a. 1. Br. *Prerogative* 13. 14. cites S. C. *Prerogative* 13. This seems to commence by Grant at first, and therefore makes a *Quare* if a *Martyr* preferre in 2.

2. *Turn-Toll* is to have *Toll* for Beasts driven to be sold, tho' they are not sold. Br. Quo Warranto. pl. 3. cites It. Not. Fol. 21 & 32 E. 3.

(C. d. 3) Proceedings, Pleadings, and Judgment in a Quo Warranto, in general.

1. **T**HE Defendant in a Quo Warranto was admitted to *Imparlie*. It was moved Keilw. 138. b. Itin. temps. E. 3.

2. Quo Warranto, and it was said that it was granted in the Case of the City of London; but the Court deny'd it; for Astry said, by the Court of the Court, they were to have but the common *Prerogative*. And (Per Cur.) being ex gratia, we may grant or deny it as we see Cause. Comb. 12. Hill. 1 & 2 Jac. 2. B. R. Anon.

2. A Quo Warranto was brought for Vexation upon 48 Points; and the Court being moved in it, ordered that the Prosecutor should wave that Quo Warranto, and should bring a new one, and therein insist only upon three Points; but that he might proceed to a Trial upon his New Quo Warranto in such Time as he might have done upon the Old (Hill. 22 Car. B. R.) to the End he might not be delay'd in his Proceedings by bringing of the new Quo Warranto. 2 L. P. R. 414. Tit. Quo Warranto.

3. There is a Difference between a Writ of Quo Warranto and an Information in Nature of a Quo Warranto, as to the Process upon them; for it seems, that the Process upon Information are *Ven. fac.* and *Distringas*. But upon the Writ of Quo Warranto it is *Summons*; and for Default of Appearance, that the Liberties shall be seiz'd. Sid. 86. in the Case of the King v. Trinity-House.— cites Co. Ent. 527, 528 &c.

4. A Verdict between private Persons may not be read as any Evidence against the King, in an Information on a Quo Warranto. 2 Show. 48. Pasch. 31 Car. 2. B. R. The King v. Carpenter.

5. A Verdict in a Quo Warranto on the meer Right, concludes the King, but on Information it does not. 2 Show. 47. Pasch. 31 Car. 2. B. R. The King v. Carpenter.

(C. d. 4) Proceedings, Pleadings and Judgment in Quo Warranto, as to Liberties and Franchises.

* This extends to all Liberties, as well to those that lie in Point of Charter, as Continuance of Pleas, Felons Goods, and the like, as to those that

may be claimed by Prescription, as Waif and Stray, and the like. 2 Inst. 496 —† This Clause extends not only to Mis-user, Dis-user, and Non-user of Liberties, but to False Claim of them, and the like. 2 Inst. 496.

Serpe said that a Hundred is out of the Case of this Statute; for this Statute is intended of Franchise, and a Hundred cannot be said a Franchise; for *Præcipe quod reddat* lies of a Hundred. But Shard said a Hundred is no other than a Franchise Royal, as View &c. by which he thought that a Hundred, which comprehended such Franchise Royal, might properly be claimed as other Franchises. Keilw. 143. Temps E. 3.

The Costs, Charges and Expences of the Subjects in these Cases were excessive,

and therefore to meet with this Mischief, and that the Subject might receive Justice in his own Country, and as it were at his own Door, it was the King's special Grace, that Pleas of Quo Warranto should be heard and determined in the Eyres of the Justices. 2 Inst. 497. — When Justices in Eyre ceased, then this Branch for the Ease of the Subject, and for saving their Costs, Charges and Expences, lost its Life; for with Justices in Eyre this Branch lived, and with them it died. Jenk. 498.

2. In Quo Warranto he claimed Franchise &c. and he made Default at the Day, by which it was awarded that the Franchise be seized into the Hands of the King; and that the Sheriff answer the Profits; and after the Defendant came by Attorney, and prayed to replevy the Franchise, and had it *Salvo Jure Regis*; and said that he claimed the Franchise as appendant Time out of Mind, and was received. Br. Quo Warranto, pl. 5. cites It. Canc. 6 E. 2. 6.

3. In Quo Warranto the Defendant claimed Assise of Bread and Ale &c. He said that it was Appendant to the Manor Time out of Mind &c. and claimed by Feoffment of the Manor cum pertinentiis. And it was held that he may vouch, because the Franchise pass'd with the Manor; and it was admitted also that he may prescribe. Br. Quo Warranto, pl. 6. cites It. Canc. 6 E. 2. 7.

4. In Quo Warranto if a Man claims Court of his Domesne Tenants in his Manor, it suffices to shew that he has Manor there without more; and there it was said that he need not answer to it. Br. Quo Warranto, pl. 4. cites T. 17 E. 2.

Keilw. 147. as S. C.

5. In Quo Warranto he claimed to have Franchise in his Manor of C. and said that his Father was seized of the Manor in Fee, and died seized, and he entered as Heir, and prayed his Age, because he is within Age; and the Parol demurr'd. Bro. Quo Warranto, pl. 3. cites It. Not. fol. 21. and 32 E. 3.

Quo Warranto is in Nature of

6. When Franchise is allowed in Eyre, the Award is no other than that he go *sine Die salvo Jure Regis*; and so if it be rightly allowed and well

used, it shall be allowed, but if it be not well allowed, we will not allow it. Keilw. 139. b. 140. a. Per Chaunt. Itin. Temps E. 3.

the King's Writ or Right for Franchises and Liberties, wherein *Judgment final* shall be given either against the King for the Point adjudged, or for the King; and the *Sole Title* for the King *serveth for any other Title* than that which was adjudged; and therefore William de Penbrugge the King's Attorney, for prosecuting a Quo Warranto against the Abbot of Fishcamp for Franchises within the Manor of Steynings *Sine precepto*, was committed to Gaol. 2 Inst. 232.

7. A *Man* at the Commencement of the Eyre *claimed to have View and Way* in his Manor of L. and in the Writ of Quo Warranto *Waif* was omitted, by which he prayed that he might plead for it upon his Claim, Et concessum fuit ei; quod nota. Keilw. 147. b. Itin. Temps E. 3.

8. In Quo Warranto against Sir J. C. for *claiming Wreck* Defendant pleaded *that E. Duke of B. was seised of the Manor of D. to which he had Wreck appendant, and was de Alta Prohibitione debito modo attinctus*, and that found before the Escheator; and that the Manor descended to *Queen M. who granted the same to the Earl of W. who granted to the Defendant*. Upon which it was demurr'd, and Exception was taken to the Plea, that the Attainder was not fully and certainly pleaded. But Plowden argued contra, that it was certainly pleaded, viz. *Debito modo attinctus*; and it is *shewn that the Wreck is appendant to the Manor*, and then if he hath the Manor he hath the Wreck also; and if Defendant hath the Manor, it is not material, as to the Queen, *How he hath it; for She does not claim the same, but impeaches the Defendant for using such a Liberty there*; but if the Heir of the said Duke had demanded the Manor there against him, the Attainder ought to have been pleaded certainly. 3 Le. 72. pl. 111. Hill. 20 Eliz. B. R. The Queen v. Sir John Constable.

9. Information was, *That where the Defendant was seised of a Manor, and of an Heale within it, he claimed to have a Court or View of Frankpledge Infra Alsugium predict.* and also *that Sine aliqua Concessione sine Autoritate usurpavit Libertates predictas*. Defendant pleaded, *That Non Usurpavit Libertates predict. infra Alsugium predict. Modo & Forma*. It was insisted that the Plea is not good; for the natural Answer to a Quo Warranto is either to Claim or Disclaim, and Defendant does neither of them. Shute J said a Quo Warranto contains but two Things in it. 1st. It demands Quo Warranto he claims such Liberties. 2dly. He charges him with a tortious Usurpation of them; and here the Defendant hath answered to the Usurpation, but not shewn by what Title he claims them. And that the like Case was adjudged in this Court, *That Non Usurpavit Modo & Forma* was no sufficient Answer. The Case was adjourned. Godb. 91. pl. 103. Mich. 28 & 29 Eliz. B. R. Sir Jervis Clifton's Case.

10. It was agreed by the whole Court, *That in a Quo Warranto it is not sufficient for the Defendant to say that such a Subject hath lawful Interest to hold Leets without making Title to himself*; for the Writ is Quo Warranto he claims them. 2 Le. 28. pl. 31. Trin. 30 Eliz. B. R. The Queen v. Partridge.

11. Quo Warranto &c. the Defendant pleaded *that the Abbot of B. was seised of Waifs and Strays by Prescription, and had used and exercised the Liberty to have Catalla Felonum within three Months before the Suppression, without shewing by what Title, Grant or Charter*; and that by the Statute 32 H. 8. for recovering the Liberties, and by Patent of Tot, Talla, Tanta, Consimilia Libertates &c. as the Abbot had, he concluded *Eo Warranto* he used and claimed the Liberties aforesaid, as pertaining to the Manor. Two Judges were of Opinion, *That the Defendant had set forth a sufficient Title by Way of Usage in the Abbot, without shewing the Grant made to the Abbot*; As a Man may plead a Discharge of Tithes of Abbey Lands by the Statute 31 H. 8. that the Abbot held discharged at the Time of the Dissolution, without shewing how he was discharged,

but Popham Ch. J. e Contra, because Felons Goods could not pass from the Crown without Matter of Record; now if an Usage should be pleadable in such Case, and Issue should be taken upon a Traverse of Legitimie usus suit, this must be tried by a Jury; and by Consequence they must find what the Law is upon that Record, which is against the Maxims of the Law; but the Cases of Tithes are otherwise, because they may be discharged by Unity of Possession, or by Real Composition, which is Matter en Pais, or by the Pope's Bulls, which are not Records in our Law. But they all agreed that he ought to shew the Estate of the Abbot, because the Statute revives no other Estate in the Liberties in the Crown, than such as came to the Crown by the Dissolution of the Abbey. And as to the Conclusion of *Eo Warranto*, they all agreed that it was good, because it was taken distributively, viz. That he us'd such as Appurtenant, which might be Appurtenant, and the others by the other Title. Mo. 29th. pl. 443. Pasch. 32 Eliz. The Queen v. Vaughan.

3 Bulst 156.
S. C. —
Roll R. 399.
Trin. 14.
Jac. S. C.

12. A Quo Warranto against the Bishop of Durham to know why he claimed to have the Goods and Chattels of Felons and Persons standing Mite. He pleaded that Durham was a County Palatine, and had jura Regalia, and by Reason thereof he claimed that Privilege. Per Coke, and the whole Court agreed thereto, That tho' a Man cannot prescribe to have Felons Goods, because such Prescription is only for Matters in Fact, yet a Man may prescribe to have a County Palatine, and by Consequence to have all these as Incidents to it. 2 Bulst. 226. Pasch. 12 Jac. Sir Jerom Bows v. Bishop of Durham.

13. Quo Warranto was brought to shew why they claim divers Liberties &c. within the Palace of the Archbishop of Canterbury. The Defendants as to Part in such a Place justly in the City Preterquam in Staple-gate and West-gate, & quoad Residuum vocant de Chm. It was resolved that the Disclaimer extends to Staple-gate and West-gate, notwithstanding the Preterquam; and Judgment of this Part was given immediately for the King. 2 Roll. Rep. 482. Mich. 22 Jac. B. R. The King v. the Citizens of Canterbury.

14. In Quo Warranto for claiming of a Market. The Defendant claimed the same by Letters Patents of E. 3. made to the Abbot of G. but did not plead *Hic in Curia prolat'* as he ought to do. The Attorney General confessed this; whereupon the Court was moved for Judgment for Defendant. But though the Patent was in Court, Doderidge J. said, it did not appear so to the Court Judicially, it not being pleaded with *Hic in Curia prolat'*. And this cannot be amended without the Attorney General's Consent, and without Amendment Judgment must be for the King; And afterwards a Rule was entered by Consent of the Court, it being moved by Coke Ch. J. viz. That the Opinion of the Court was, That the Plea in Bar here is not good, neither in the Manner nor Matter of it; And this was done, because otherwise this Matter hereafter might be Evidence against the King. 3 Buls. 58. Trin. 13 Jac. the King v. Capel.

15. A Quo Warranto was brought for claiming divers Liberties, Privileges &c. without expressing any Certainty of what they consisted, as Waife, Estray, Frank-pledge &c. so as Defendant might make a particular Answer to them, and therefore the Court held it naught. But Mr. Waterhouse the Prothonotary said, that there are Precedents accordingly; Whereupon a Day was given to search the Precedents, and Process was ordered in the mean time to cease against the Defendant. Noy. 121. Sir Henry Cheverell's Case.

16. A Quo Warranto was brought for usurping certain Privileges within the Manor of Linton. Issue was joined, whether John Abbot of P. ever used Privileges of Court Leet and Court Baron; and found that he had not used them &c. It was moved in Arrest of Judgment; 1. Because they find that the Keeping of the Court Leet and Baron is an Custom, and that they also find that such Courts are used as within the Manor (the Manor)

Manor) which is impossible; For a Court Baron is a necessary Incident to it as it is a Manor and cited 6 E. 3. 11. No Judgment was given. 2 Sid. 68. Pasch. 1658. B. R. Wildmore's Case.

17. In a Quo Warranto against the Town of Farnham, for *using a Fair and Market, and taking Toll &c. If it was taken, whether they had Toll by Prescription or not*, and it was found that they had; but it was moved in Arrest of Judgment, that here was a *Discontinuance*, because there was *No Issue as to the other Liberties* claimed by them, (*scilicet*) a *Fair and Market*; and this Action is not helped by the Statute of Jeofails, *Quod fuit concessum*; But the Chief Baron said, that they were too soon to urge that, because Judgment was not yet given, and *before Judgment there can be no Discontinuance against the King*, because the Attorney General may yet proceed, by the King's Prerogative, to take Issue upon the right, or may enter a *Nolle Prosequi*, but if he will not proceed, the Court may make a Rule on him *Ad Replicandum*, and so there may be a special Entry made of it, wherefore non Allocatur. Hard. 504. Pasch. 21 Car. 2. in the Exchequer. Attorney General v. Town of Farnham.

18. Upon a Quo Warranto when the *Liberties are seized quousque &c.* and they do not replevy them, (*per Attry*) the Course is, That Judgment final shall be given *Nisi* they plead within such a Day. Comb. 19. Pasch. 2 Jac. B. R. Anon.

19. Wherever any Judgment is given for the King for a Liberty usurped, it is *Quod extinguatur*, and that the Person who usurped *Libertates &c. Nullatenus incromittat &c.* which is the Judgment of Ouster, but the Quo Warranto must be brought against particular Persons. But where it is for a Liberty claimed by a Corporation, there it must be brought against the Body Politick, in which Case there may be a Seizure of the Liberties which will not warrant either the Seizure or dissolving of the Corporation itself. Per Curiam. 4 Mod. 58. Mich. 3 W. & M. B. R. in Sir Ja. Smith's Case.

20. If several Privileges are granted in a Charter, and there is a Forfeiture of the Charter for an *Auoir of one of the Privileges*, and a Quo Warranto is brought, and Judgment upon it, this is a Forfeiture of the whole Charrer. 2 L. P. R. 414. tit. Quo Warranto.

21. It was moved for an Information in Nature of a Quo Waranto against the Steward of a Court Leet, and against the Bailiff and Constables, for *impannelling a Jury not duly summoned*, the Bailiff being the proper Officer to summon them who should be all Freeholders, for they only have a Right to be Jurymen, but there were none summoned, and 6 Persons who had no Right being present in Court were sworn of the Jury, and 6 Freeholders being likewise present in Court refused to be sworn because not summoned, neither would they serve with those who had no Right to be of the Jury, whereupon the Steward swore 6 more; and the Jury was constituted of 12, notwithstanding Right to be Jurymen, chose the Bailiff and Constables. The Steward shewed for Cause, that the 6 Freeholders who appeared in Court were duly summoned but refused to be sworn, whereupon he swore a Jury out of such as were present, which he insisted was a good Election, and that this Jury chose the Bailiff and Constables, and that this was the constant Course of choosing such Officers: And that it would be dangerous to make a Precedent of trying the Right of choosing such Men by a Quo Warranto. The Court thought there was no Room for any Complaint against the Constables or Bailiff; but if any, it is against the Steward; and so a Rule was made for him to attend, and shew Cause why an Attachment should not go; and the Rule for the rest was in the mean time enlarged. 8 Mod. 130. Trin. 9 Geo. 1724. The King v. Harrison.

(C. d. 5) Proceedings, Pleadings, and Judgment in Quo Warranto, as to Corporations.

1. **I**N a Quo Warranto brought against the Bailiffs, Aldermen &c. they appeared by Warrant of Attorney, but one of the Bailiffs named in the Warrant did not appear nor agree to it. The Appearance by the major or greater Part being recorded was held sufficient. And also, that tho' the Warrant of Attorney was under another Seal than their common Seal, yet being under another Seal and recorded it cannot be annulled. Godb. 439. Bailiffs &c. of Yarmouth's Case.

It was said in this Case, that the Soil of all Navigable Rivers in England belongs to the King, and the Reporter adds a Nota, that if this had been in a Quo Warranto, the Judgment had been final, because

that is a Writ of Right; but it being in an Information in Nature of a Quo Warranto, it is not conclusive, and it appears by Precedents, that there is a Difference in Proceedings. In the *Ex-Post* it is a *Sommons*, and for Default of Appearance Judgment is that the Liberties be seized, but in the Information the Process is a *Levée Facias* and *Levings*. Sid. 86. Trin. 14 Car. 2. B. R. The King v. Trinity House.

2 Keb 52.
63. 88.

3. In a Quo Warranto against the Musicians Company in London the Return was, that they were a Corporation &c; but the Court took Exception to the Return, 1. Because it appears that the Name of their Corporation was *The Master and Wardens*, whereas in their Return they made themselves *Guildor Fraternity*; For they must be the one or the other. 2dly, They returned, that they may elect Persons of the Fraternity into the said Fraternity, which is contradictory; For they ought to elect into the Society such as were not of it before, and not such as were. Sid. 290. pl. 7. Trin. 18 Car. B. R. The King v. Berdwell.

4. The King brought Quo Warranto against A. B. C. and D. & alios Periclitatores & Plantatores pro prima Colonia London in Virginia, to know by what Warrant they claim divers Liberties. They come and plead insufficiently, upon which the King demurs. The Question is, How Judgment shall be entered? For the Master and chief of the Company were left out in the Quo Warranto, and the Judgment was given against A. B. C. and D. & alios Periclitatores &c. but *Quere if this binds the Corporation?* 2 Roll. Rep. 455. Trin. 22 Jac. B. R. Virginia Company's Case.

5. A Corporation aggregate may be forfeited and seized into the King's Hands upon a Breach of Trust reposed in them for the good Government of the King's People. And in the principal Case a Seizure is plainly implied in the Statute of 28 E. 3. cap. 10. which enacts, That on the first Offence of the City of London, it shall forfeit 1000 Marks, on the second 2000, and for the third, the Liberty and Franchise of the City of London shall be taken into the King's Hands, which plainly argues that there may be a Seizure of the Corporation; and as to a Forfeiture the Act of Oblivion proves it, where 12 Car. 2. cap. 11. S. 5. is, "That all Bodies Corporate, Ci-

"ties, Boroughs &c. are pardoned and acquitted of all Forfeitures &c." And should the Law be otherwise, it would erect so many independent Republicks, as there are Corporations now in England, which would be of mischievous Consequence to the King and Kingdom. 2dly, The affirming a Power to make By-Laws for levying Money as they have done, is a great Oppression of the People, and consequently a Breach of that Trust reposed in them for the Wellfare of the King's Subjects, and consequently a just Cause of Forfeiture. 3dly, A Petition (mentioned in the Pleadings) *complaints to the King and his Government, and tending to let in the People an Hatred of their Sovereign* is a just Cause of Forfeiture. Resolved. 2 Show. 278, 279. Hill. 34 & 35 Car. 2. B. R. The King v. the Mayor &c. of London.

6. If the Corporation in a Quo Warranto appears not thereto, Judgment shall be enter'd for a Seizure Quousque, and if in the mean time they come not and repley their Corporation and appear, then Judgment shall be given against them in the Term after; And it shall not be a good Appearance, unless the Warrant of Attorney be made under the Corporation Seal. 2 Show. 365. pl. 356. Trin. 36 Car. 2. B. R. The King v. Chester City.

7. 9 Ann. cap. 20. S. 1. Where any Writ of Mandamus shall issue out of the Queen's Bench, the Courts of Sessions of Counties Palatine, or the grand Sessions in Wales, to admit and restore Burgesses or Officers of Corporations, such Persons, who by Law are required to make Return, shall make their Return to the first Writ of Mandamus,

S. 2. As often as in any of the Cases aforesaid any Mandamus shall issue, and a Return shall be made, it shall be lawful for the Persons, suing such Mandamus, to plead to or traverse all or any material Facts contained in the Return, to which the Persons making Return shall reply, take Issue, or demur, and such Proceedings shall be had therein, as might have been had if the Persons suing such Writ had brought their Action on the Case for a false Return, and if Issue shall be joined on such Proceedings, the Persons suing such Writ, may try the same in such Place as an Issue joined in such Action on the Case might have been tried; and in Case a Verdict be found for the Persons suing such Writ, or Judgment given for them, they shall recover their Damages and Costs as they might have done in such Action on the Case to be levied by Capias ad Satisfaciendum, Fieri Facias, or Elegit; and a peremptory Writ of Mandamus shall be granted without Delay, as if such Return had been adjudged insufficient; and in Case Judgment shall be given for the Persons making such Return, they shall recover Costs.

S. 3. If Damages be recovered by Virtue of this Act against any such Persons making such Return to such Writ, they shall not be liable to be sued in any other Action for making such Return.

S. 4. In Case any Persons shall usurp, intrude into, or unlawfully hold any of the said Offices or Franchises, it shall be lawful for the proper Officer in each of the said Courts, with the Leave of the Courts, to exhibit Informations in the Nature of Quo Warranto, at the Relation of any Persons desiring to prosecute the same, and who shall be mentioned in such Informations to be the Relaters against such Persons so usurping, intruding into, or unlawfully holding the said Offices or Franchises; and if it shall appear to the Courts, that the several Rights of divers Persons to the said Offices or Franchises may properly be determined on one Information, it shall be lawful for the said Courts to give Leave to exhibit one such Information against several Persons, in order to try their respective Rights; and such Persons shall appear and plead as of the said Term and Sessions in which the Informations shall be filed, unless the Court shall give further Time, and such Persons who shall prosecute such Informations shall proceed thereupon with the most convenient Speed.

Informations in Nature of a Quo Warranto may be brought with Leave of the Court at the Relation of any Person desiring to prosecute, and this by Virtue of the Statute of 9 Geo. 2. the End of which Statute was the King v.

to prevent Frivolous and Vexatious Controversies. Per Cur 8 Mod 351. Pasch. 11 Geo 2. Ender.

S. 5. In Case any Persons, against whom any Informations in Nature of a Quo Warranto shall in any of the said Cases be extended, shall be convicted of an Usurpation, or Intrusion, or unlawfully holding any of the said Offices or Franchises, it shall be lawful for the said Courts to give Judgment that the Relators shall recover their Costs; and if Judgment be given for the Defendants, they shall recover their Costs against such Relators.

S. 6. It shall be lawful for the said Courts to allow to such Persons, to whom any Writ of Mandamus shall be directed, or against whom any Information in Nature of a Quo Warranto, in any of the Cases aforesaid, shall be prosecuted, or to the Persons, who shall prosecute the same, such convenient Time to make a Return, Plead, Reply, Rejoin or Demur, as to the said Courts shall seem just.

S. 7. The Act 4 Ann. cap. 16. for Amendment of the Law and all the Statutes of Justices, shall be extended to Writs of Mandamus and Informations in Nature of a Quo Warranto.

S. 8. The Mayor, Bailiff, or other Officer, to whom it belongs to preside at the Election, and make Return of any Member to serve in Parliament, and who ought to be annually elected, and who has been in such annual Office for one Year, shall not be capable to be chosen into the said Office for the Year immediately ensuing; and where any such annual Officer is to continue for a Year, and until some other Person be chosen and sworn into such Office, if any such Officer shall voluntarily and unlawfully prevent the choosing another Person to succeed into such Office at the time appointed, he shall forfeit 100 l. to be recovered with Costs of Suit by such Person as will sue for the same in her Majesty's Courts of Record, one Moiety thereof to be to her Majesty, and the other Moiety to him that will sue for the same.

8. Information in Nature of a Quo Warranto against S. for usurping the Office of a common Burgeſs of the Town of the Devises in Wiltſhire; and upon a Trial at Bar upon this Issue, *Whether Sutton was chosen a Capital Burgeſs by Mayor, Recorder and Capital Burgeſſes?* the following Points aroſe; the Recorder had made a Deputy Recorder by Writing under his Hand and Seal, and afterwards had revoked this Deputation by another Writing, a Copy of which was offer'd in Evidence of the Revocation. But this held not good Evidence, because it did not appear but they might have produced the Original. Deputation of an Officer is in its own Nature grantable by Parol; and therefore tho' it should happen to be granted by Writing, yet since it is in itself grantable by Parol, it may be revoked by Parol. By the Charter that incorporates the Town, the Mayor, Recorder, and in his Absence Deputy-Recorder and Capital Burgeſſes, *vel major pars eorundem*, are impowered to choose Capital Burgeſſes: Now the Question was, *Whether upon these Words of the Charter, Acts done by the Mayor and Majority of the Burgeſſes, without the Presence of the Recorder or his Deputy, were good?* And the Court seemed to incline that they were good, because the Word (*Eorundem*) refers not only to the Capital Burgeſſes, but Mayor, Recorder and Capital Burgeſſes; and yet the Reason why the Presence of the Mayor is necessary to Corporate Acts, is not because he is particularly named, but because he is the Head of the Corporation; and if this were not so, the Addition of these Words in Charters (*Quorum Recorder unus,*) would be useleſs and unnecessary. 10 Mod. 74. 75. Hill. 10 Ann. B. R. The Queen v. Sutton.

9. Another Question was, *Whether supposing it not necessary by the Charter, that the Recorder should be present, yet the Issue did not oblige them to prove him present at the Election?* To this it was said by the Council, that Conceſſo the Charter did not require the Presence of the Recorder, the Question was no more than this, *Whether they should be obliged to prove an immaterial Part of the Issue?* It was said further, that by a Parity of Reason it might be expected that they should prove the Presence of every one of the Common Burgeſſes; That by the Issue no more was meant, than that the Election was made by those who had a Vote therein;

That *Ubi major pars, ibi tota*, viz. the Authority of the whole. And of this Opinion was the Court. 10 Mod. 75. The Queen v. Sutton.

10. Another Question started was, *Whether in a Corporation that was by Charter to consist of Mayor, Recorder, Common Burgesses &c. the same Person might not be both Mayor and Deputy Recorder.* 10 Mod. 75. The Queen v. Sutton.

11. Another Point was moved upon the Words of the Charter, which appoints the Swearing of a Common Burgess to be done *before the Mayor, Recorder, Common Burgesses, or the Majority of them Tunc et presentium*; whether or no a Majority of the whole Body was by these Words necessary to be present at the Swearing, or whether a Majority of those that were present was only requisite, tho' they should not be the Majority of the whole? It was said, that upon the Reason of the Thing it was not necessary that the Swearing in should be done with the same Solemnity as the Chusing in; for the Choice is a voluntary deliberate Act; the Swearing in on the contrary is what a Person once chosen may challenge as his Right, and may by Mandamus compel them to do. And if this Construction did not prevail, the Words in this Clause of the Charter concerning the Swearing, *Tunc ibi presentium*, which are not in the Clause concerning the Election, would signify nothing. As for the Objection, That it seems absurd to say a Man must be sworn before a Majority of those that are present, since if they are present he must unavoidably be sworn before them all. The Answer is, That this Clause is to be understood of being sworn in by the Consent of a Majority of those that were present. 10 Mod. 75. 76. The Queen v. Sutton.

12. Another Question was, *Whether by a Charter that requires Acts to be done by a Majority of the Corporation, a Person might not be removed by a Majority of that Body, excluding the Persons that are to be removed, and cannot vote in their own Cause?* But the whole Court were of Opinion, that a Removal being an Act of an odious Nature, all Clauses concerning it must receive a strict Interpretation; and that therefore the Word Majority should be understood of a Majority of the whole Corporation. 10 Mod. 76. The Queen v. Sutton.

13. Another Question raised was, *Whether not functioning to a Meeting, Members de Facto disfranchis'd, tho' afterwards upon Re-examination it should appear they were still lawful Members, should vacate Acts done in those Meetings?* Court inclined to think it would not vacate them. 10 Mod. 76. 77. The Queen v. Sutton.

14. Some of the above Points were directed to be found specially. Ibid.

15. An Information in Nature of a Quo Warranto was brought against W. for exercising the Office of Mayor in Portsmouth. W. pleaded the incorporation of King Cha. 1. incorporating the Town of Portsmouth &c. and its charter a particular Clause in the Charter, defining, That if the Mayor should die, or for just Reasons be removed, it should be lawful for the Aldermen to chuse another Mayor for the remaining Part of the Year, until the Time to elect came about again; then he sets forth, that the Mayor died, and that he was chosen by the Majority of Aldermen, *Secundum formam Chartæ prædictæ*. The Attorney General replied, *Non electus Modo & Forma &c.* Upon Trial at the Assises it was insisted, That the Defendants to prove the Issue must first prove themselves qualified by receiving the Sacrament according to the Act of King Cha. 2. which Point, instead of being found specially, was saved by the Judge who tried the Cause. It was afterwards argued for the Defendant, but no Judgment is mentioned. 10 Mod. 64. Mich. 10 Ann. B. R. Whitehorn the Mayor of Portsmouth's Case.

16. An Information in Nature of a Quo Warranto was for exercising the Office of Recorder in the Borough of Hinton. The Defendant in his Plea set forth a Right to that Office, and concluded with a Traverse of the Plea, that the Defendant usurped the Office. The Crown in its Reply, taking

serv. and
advised (a-
mong other
Things)
That the
Defendant
by joining
particulars,
had engaged
the whole
Charge of the

taking no Notice of the special Issue set forth by the Defendant, joined Issue upon the Traverse Quid usurpavit &c. and upon this *Demurres* is joined. Powis jun. J. said, He ever took it, that in this Case the *Abſque hoc &c.* was but a meer Matter of Form, and a respectful Way of concluding the Plea. And Parker Ch. J. said, The Question turns upon this, Whether the Traverse be only Matter of Form? for if ſo, the Crown cannot take Issue upon it; but if it be a material Plea, moſt certainly the Crown may do it. 10 Mod. 210. Hill. 12 Ann. B.R. The Queen v. Blagden.

Information, which was for him to ſhew Quo Warranto &c. And the Court were all of Opinion, that Defendant ſhould have Judgment. And Parker Ch. J. ſaid, No Body ever thought Non Usurpavit a good Plea, becauſe it evidently appears from the Nature of the Charge, which is to ſhew by what Warrant or Authority, to which that Plea is no Answer. And if this could not have been pleaded in Bar, then that Replication, which in Effect ſets up that Plea again, muſt be naught. And to this Powis and Pratt J. agreed — An Objection having been made, That in an *Information of Intruſion the King may take Issue upon the Uſurpation, tho' the Title be ſet forth*, It was answered, That an Information of Intruſion is of a different Nature from that of a Quo Warranto, becauſe it does not follow from his having a Title, that he is no Intruder, but it does that he is no Uſurper. And the *Course of Precedents* is ſo in Intruſion, but otherwiſe in this Kind of Information, which is a presumptive Argument that there is a Difference. And there is another Difference, That in an *Information of Intruſion the Crown ſets forth its Title, and concludes de Pramiffis &c.* Arg. 10 Mod. 297. & Ibid. 299 Parker Ch. J. approved the Diſtinction, for tho' the Defendant ſhould have a Title, yet it is very poſſible he may be an Intruder, but impoſſible that he ſhould be an Uſurper.

17. Upon a Rule to ſhew Cauſe why an Information in Nature of a Quo Warranto ſhould not be granted *to ſhew by what Authority he claimed to be Mayor of Leſtwithiel in the County of Cornwall*, it was ſhewn, That by the Charter of Incorporation a Mayor is always to be elected out of the Capital Burgeſſes, and *to continue in his Office till a new Mayor be duly choſen*; That the Defendant the preſent Mayor never was a Capital Burgeſs, and conſequently never could be duly choſen Mayor out of thoſe Burgeſſes; and therefore is no Mayor. To this it was answered, That he was choſen a Capital Burgeſs in 1697. and that as many of the Inhabitants as are now living ſaw that he was duly elected, except one John John, who now complains againſt him; and that having now ſo long acquieſced under that Election, it ſhall not now be brought in Queſtion, it being a ſtanding Rule in Caſes of this Nature, that they ſhall not be examined in ſuch remote Degrees. That Defendant was choſen Mayor in 1706. and that the Corporation, for ſome Differences among themſelves, did not proceed to any Election of Capital Burgeſſes ſince that Time; ſo that the Borough wanted a ſufficient Number of ſuch Burgeſſes to choſe a new Mayor, and for that Reaſon the Defendant had continued Mayor ever ſince. The Chief Juſtice was of Opinion, that the Faſt was plain that Defendant had been Mayor for 16 Years together, which is a ſufficient Cauſe for an Information; ſo that the Rule was made abſolute, and the Parties were left to try their Right upon this Information, tho' one of the Judges was of Opinion, That a Mandamus to elect a Capital Burgeſs and a Mayor had been a good and proper Method. 8 Mod. 132. Trin. 9 Geo. 1724. The King v. Alexander John.

18. On a Rule to ſhew Cauſe why an Information in Nature of a Quo Warranto ſhould not go for *claiming to be Capital Burgeſſes of Brecknock*, it was objected that they *never were duly choſen Burgeſſes*; and tho' one had been Burgeſs de Facto 12 Years, and the other 16 Years; and tho' it was urged that it would be of fatal Conſequence to this Borough, after ſo long an Acquieſcence, to make all the Corporate Acts done by them during all that Time void, yet it was answered that the long Acquieſcence could be no Colour againſt this Rule, which is made on the meer Right, and that Length of Time will never eſtabliſh a Right gained by Uſurpation; that 'tis true, in Caſes of *not taking the Sacrament, or the Oaths of Allegiance and Supremacy*, the Court after a long Acquieſcence will intend that they were duly taken; but a Right ſhall never be intended when the Merits of it are controverted (as in the principal Caſe)

The like Rule was made on P. to ſhew by what Authority he claimed to be Recorder of the ſame Borough; But as to his Caſe, he was elected 29 April 1722; but finding that Elec-

and no collateral Point disputed. And the Court being of that Opinion, the Rule was made absolute. 8 Mod. 165. Trin. 9 Geo. 1724. The King v. Powell & al.

tion not to be good, he was not to be the Mayor following;

and before he was sworn into the Office; the Court discharged the Rule made to the like Purpose as to the Recorder, because he did not rely upon his first but upon his second Election. Ibid. Price's Case.

19. Stat. 9 Ann. 20. is not exclusive of a Quo Warranto in all Cases not recited in the Preamble of the Act; and in the principal Case, which was for exercising the Office of Bailiff of the Town of D. which was averr'd to be an Office for the Administration of Justice, and therefore of a Publick Nature, Judgment was given pro Rege. Gibb. 82. Trin. 2 & 3 Geo. 2. The King v. Boyle.

20. If the Party on whom a Rule is made for an Information in Nature of a Quo Warranto, can shew to the Court, that his Right to the Franchise in Question has already been determined on a Mandamus; or that it hath been disputed in many Years without any Dispute; or that it depends on the Right of those who voted for him, which hath not yet been tried; or that the Franchise no ways concerns the Publick, (as all those which relate to the Government of a Corporation, or the Election of Members of Parliament, and Fairs and Markets &c. are wont to do) but is wholly of a private Nature, as a Copy-tenure &c. or that the Election by which he claims is agreeable to Charter; or that he has never acted under it, the Court will not grant the Information unless there are some particular and extraordinary Circumstances in the Case, the Determination whereof being left wholly to the Discretion of the Court cannot well come under any stated certain Rules. 2 Hawk. Pl. C. 262. 263. cap. 26. S. 9.

(D. d) Fifteenths [and Tenths.] *What.*

1. **Fifteenths and Tenths** are a certain Tax anciently by Parliament imposed on singulis Civitatibus, Burgis & Oppidis, but not upon every particular Man, but generally according to the Rate of the 15th Part of the Goods and Possessions, as it seems, of the Place. Camden Liber Annatum 80. A Fifteenth was granted to E. 1. as appears by 7 E. 1. Rot. Clauso Memb. 5. 8 E. 1. Memb. 3. 5. 6. 3 E. 1. Rot. Pat. Memb. 6.

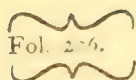
Spelman's Gloss. Verbo Quindecima says, That it was Tributum singulis Civitatibus, oppidis, Villis totius Anglie

ab antiquo usque; certum autem & definitum, quod tamen nec annuatim, nec sine Parlamento decreto exigatur. Alias Tallagium & Taxa. Gal. Quindiesime, Anol. The Tax Quindiesime sumptit e Sacorum Danegeldis, quod vide, & Hidagium: nam cum ex nidiarum plerumque colligeretur descriptio e Hidagium, utitur & pari ratione Curatagium dicitur ab Authoribus. Vide (Inquire) has voces. Litere Ed. 1. Willielmo Spileman & W. Gilberti. — Venire facias coram Vobis tot & tales, tam Milites, quam alios probos & legales Homines de Com. predicto, tam infra Libertates quam extra, pro Quindiesima. Dat. 24 Oct. Reg. 5. Claus. Rot. ejusdem anni.

2. A Thirtieth and Twentieth was granted to E. 1. Rot. Pat. 34. E. 1. Memb. 12.

3. By the Exposition of those of the Exchequer, *Tax and Tallage is no other but Tenth, Fifteenth, or other Subsidy granted by Parliament, and the Fifteenth is of the Laymen, and the Tenth is of the Clergy, and is to be levied of their Land; and the Tenth and the Fifteenth of the Lay Gents is of the Goods, viz. the Tenth Part of the Goods in a City and Borough, and the Fifteenth Part of the Goods of the Laymen in the Country, which was levied in ancient Times upon their Goods; that is to say, of the Beasts upon their Lands, which was very troublesome; but now it is levied according to the Rate of their Lands by the Yards of Land, and other Quantities: so that now all know their Certainty in every Vill, and pay their Taxes*

the Realm; but it is yet levied in some Places upon their Goods, but in several Places upon their Lands; which was agreed by the Barons. Br. Quinzime. pl. 9. cites M. 34 H. 8.



(E. d) *How it may commence.*

See (D. d) in I. **T**HE Fifteenth is not any Inheritance in the King, for he cannot have it without the Grant of his People. 11 D. 4. 35. b. pl. 1.

(F. d) *How the Taxation shall be.*

There is no Number to this Plea in Roil. [1.] **V**IDE the Form of the Taxation. 1 E. 2. Rot. Pat. Bench. 7.

2. The Prior of E. in London brought *Attachment upon a Prohibition* against the Collectors of the Tenth and Fifteenth in London, and counted that he had delivered the Prohibition in the Presence of certain People, that they should not distrain for Rent of certain Tenements held of him in London; and notwithstanding they had taken certain Sums of the Rents of certain Tenements of the Prior for the Tenths wrongfully &c. The Collectors said, that their Commission was to collect the Tenths, among other Goods and Chattles, of Goods arising of Lands, and Tenements purchas'd of Religious, as appears Anno 21 E. 1. and because the Lands and Tenements was purchased in forma prædicta, and because the Wards where &c. were not sufficient in Goods, they took the Rents of the Tenements of the Prior after the Day of Payment thereof; and the Prior alledg'd, that they had levied the Fifteenth * of the Goods of the Tenants inhabiting in the said Tenements, so ought he to be discharged from paying for the Rent. And, Per Curiam, because the ‡ Tenants paid for their Goods in the Tenements, the Prior ought to be discharged from any Payment for the Rent of the same Tenements; by which it was awarded, that the Prior recover Damages tax'd to 10l. and that the Collector capitulate. Br. Quinzime. pl. 2. cites 7 H. 4. 33.

* All the Editions are (des biens et Tenements Inhabitants in le &c.)
‡ Orig. is (Tenements)

But Per Hill; the Laymen shall be charged for their Goods to the Fifteenth, and the Lay Tenants for their Land. Ibid.

3. Where Granges &c. are charg'd to the Fifteenth, and after are made Villis and are inherited with Laymen, yet they shall not be affect'd to the Fifteenth for their Goods; for the Lord is charged to the Tenth. Per Thim. Br. Quinzime. pl. 3. cites 11 H. 4. 35.

4. If Fifteenth, Tenth, Tax, Tallage, or Subsidy be granted, and the Vill of D. is tax'd to 10l. and f. S. of D. is privileg'd therefrom by Grant of the King, there his Sum shall be recoup'd, and the Vill shall be charg'd of the rest. Per tot. Cur. Arguendo, quod nota. Br. Quinzime, pl. 5. cites 19 H. 6. 63.

‡ Le. 111. pl. 227. S. C.

5. It was held, that Fifteenths are to be levied of Goods and Chattles properly, and one Township sometimes is richer than another, and therefore it is not Reason that they pay their Fifteenth always according to the same Proportion. But by Clerk Baron, where the Custom has been, that the Fifteenth should be tax'd according to the Quantity of Acres, there the Rate and Purport shall be always one, whosoever holds the Land. 4 Le. 185. Trin. 32 El. in the Exchequer, Bartase and Hind's Case.

6. Since the Time of Magna Charta, the Manner of the Fifteenth is alter'd; for now the Fifteenth, which is also called the Task, is not originally

ginally set upon the Polls as at that Time it was, but now the Fifteenth is certainly rated upon every Town. And this was by Virtue of the King's Commission into every County of England in 8 E. 3. Taxations were made of all the Cities, Boroughs and Towns in England, and recorded in the Exchequer; and that Rate was at that Time the Fifteenth Part of the Value of every Town, and therefore retaineth the Name of Fifteenth still. 2 Inst. 77.

(G. d) Who shall pay it.

[1.] **V**IDE the Form of assessing it. 34 E. 1. Rot. Pat. Memb. 12. 1 E. 3. 2. Rot. Pat. part 1. Memb. 7.

2. Note that Cities and Boroughs shall pay to the Tenths, and Uplands to the Fifteenths. Br. Quinzime, pl. 8. cites 11 H. 4. 2. and says, this was likewise agreed in the Exchequer, Anno 34 H. 8.

3. And see in the Register 181, that none shall pay to the Tenth but Boroughs, and Tenants in ancient Demesne and others shall pay to the Fifteenth, and none shall be double charged, nor compell'd to pay to the one and the other. Ibid. and cites F. N. B.

4. A. was assels'd to a Fifteenth, but upon Refusal to pay the same, the Collector distrain'd his Beasts and sold them. A. brought Tretpats. The Collector exhibited a Bill against A. who shew'd, that the Statute 29 Eliz. which enacted this Fifteenth, Provides, That it should be levied of the Moveable Goods, Chattles, and other Things usual to such Fifteenths and Tenths, to be contributory and chargeable. And shew'd further, That his Beasts distrain'd were tempore Distractionis upon the Glebe-Land of a Parsonage-Presentative, which he had in Lease; which Glebe-Land is not chargeable usually to Fifteenths granted by the Temporality, nor the Cattle on it. It was the Opinion of the Justices, That tho' the Parson himself shall pay Tenths to the King, yet the Lay-Farmer shall pay Fifteenths, and his Cattle are distrainable upon the Glebe-Lands of the Parsonage. And so the Distress and Sale were awarded lawful. 3 Le. 259. pl. 344. Mich. 32 Eliz. B. R. Sledd's Case.

There is no Number to this Plea in Roll.

S. P. Br. Exemption. pl. 13.

S. P. Br. Exemption. pl. 13.

2 Le. 146. pl. 170 Mich. 32 Eliz. S. C. b. Name of Stedda's Case.

(H. d) In respect of other Charge.

1. **A**N Abbot or other Religious Man shall not be charg'd to the Fifteenth for those Goods of which he pays a Tenth among the Spiritual. (Vide this) 1 E. 2. Rot. Pat. Memb. 7. 3 E. 2. Rot. Pat. Memb. 27.

2. If an Abbot be charged for Tenths for his own he shall not be charged for the same for a Fifteenth. 11 D. 4. 35. Adjudged.

3. If Land be discharged of Fifteenths in the Lands of the Abbot in respect of Tenths paid by him, if the Land after comes into the Hands of Tenants, and after comes back to the Abbot, yet it is not chargeable. 11 D. 4. 35 b. 37.

Br Quinzime. pl. 35 cites S. C.

Br Quinzime. pl. 35 cites S. C. Per Thira, And the King may be

served of his Sum of the Goods of other Lay-Tenants. It shall be discharged of the Tenths. Per Thira. And therefore it seems that it shall pay the Tenth again. Br. Bateingillians. pl. 12 cites 11 H. 4. 34, 35.

4. If Land has been charged of Fifteenths in the Hands of the Abbot, and there are no Inhabitants upon the Land; it after there are Inhabitants and a Vill, yet the Inhabitants shall pay Fifteenths, tho' that Lord pays Tenths for the same Land. 11 D. 4. 36. b.

See (N. d.)
pl. 5.

(I. d) Fifteenths. *Tenths.*

1. **H**E who is assessed in one Vill by his Beasts or Goods to the Fifteenths, cannot be assessed also in another Vill. 11 D. 4. 35. b. 21 E. 3. 42. b.

2. A Man cannot be assessed to the Fifteenth for certain Beasts, if he has not any Beasts at the Time. 11 D. 4. 36. b.

Br. Quinzime pl. 4.
citess. C. per Hack.

3. If I have Terretenants in a Vill, and they pay for their Goods to the Fifteenth, I, who have nothing in the Vill but the Rent of my Tenants, shall not pay to the Fifteenth. 11 D. 4. 45. b.

Br. Quinzime pl. 4.
citess. C. per Strene.

4. If I lease Land for Years or Life, rendering Rent; the Lessee shall pay to the Fifteenth for his Goods, and I shall pay nothing for the Rent. 11 D. 4. 45. b.

Br. Quinzime pl. 2.
citess. C.

5. So if my Tenants pay Fifteenths for their Chattels, I shall not pay Tenths for the Rent of the same Land. 7 D. 4. 33. b. *Adjudged.*

6. If a Manor be annexed to the Spirituality of a Priory, and the Prior is taxed after among the Clerks for this, yet the Tenants in Fee of the Manor shall be taxed to the Fifteenth among the Temporal Men. 29 E. 3. 28. b.

Br. Quinzime pl. 2.
citess. C.

7. And so the Prior himself, if any of those Tenements in Fee come to him by Escheat, shall be taxed to the Fifteenth for them. 29 E. 3. 28. b.

8. But if any Tenements which were in the Hands of the Tenants by Bondage, or of Tenants for Life or Years at the Time of the Annexation of the Manor to the Priory, shall after come to the Prior in Possession, he shall not be taxed to the Fifteenth for them. 29 E. 3. 28. b.

9. 9 H. 4. 7. Enacts that Goods shall be chargeable towards the Payment of Tenths or Fifteenths in the Place where they were at the Time the same were granted; *howbeit, none shall be twice charged for his Goods.*

10. The ancient Way was by *Tenths and Fifteenths*, then by *Subsidies*, and after by *Royal Aids*, and at last by a *Pound Rate*; the former were all on the Person or Personal Estate, and were much the same Thing; the latter was upon Rents and Lands. In 8 E. 3. a *Valuation* was made on all the Towns in England, and returned into the Exchequer, which became the *Standing Measure* for taxing. The first Subsidy was in and by 32 H. 8. 50. which was a Tax on the Person for his Lands and Goods, payable by the Party where he lived; and this continu'd till 15 Car. 1. The Assessment of Tax according to a Pound Rate came in in 17 Car. 1. and there was a Clause empowering the Tenant to deduct, and so it was in 1642, 44, 49. and thence it came to be provided in Conveyances, that there should be no Deduction of Taxes. 2 Salk. 615. Hill. 9 W. 3. B. R. *Brewster v. Kidgell.*

(K. d) *For what Goods they shall be taxed.*

[1.] **O**F this Taxation of Goods of the Commynalty of all the Counties shall be foreprized Armour, * Horse Furniture, and Robes to Knights, and to Gentlemen and their Femmes, and their Vessels of Gold, of Silver, and of Brasse; and in Cities and Boroughs are to be excepted one Robe for the Man and another for the Feme, and one Bed for both, one Ring and one Buckle or Clasp of Gold or Silver, or one Girdle † of Silk which they always used, and also one Cup of Silver or of ¶ Nazre, out of which they drink. And of Goods of ‡ Houses there, where they are governed by Sovereign, they are not to be taxed nor prised; and if they be House governed by a || Mesne Lord, their Goods shall be taxed as well as others are. And of Goods of People out of Cities, Burghs, and Demesnes of the King, which Goods are found by Taxation not to exceed the Value of ten ** Soudes, nothing is to be demanded or levied; nor of Goods of People of Cities, Burghs, or Demesnes of the King, which do not pass the Value of 15 Soudes, is any Thing to be demanded or levied.

There is no Number to this Plea in Roll.

* Orig. is (Monture, jureux.)

† Orig. is (de Sey.)

¶ Nacre de Perles, signifies (Mother of Pearle.)

‡ Orig. is (Mesels.)

|| Orig. is (Mestre.)

** Soudes or Soudis is

small Money current at

Ormus, in

the Persian Gulph, and is of the Value of about 15 French Sols. Richelet's Dict. — A Sol is about an English Penny. See Boyer's Dict.

(L. d) *At what Place it may be taxed.*

1. **I**F a Man has Land in a Vill, sow'd with Corn, and has used Time out of Mind to carry the Corn to another Vill, and spend it there, if the Corn was growing there at the Time of the Grant of the Fifteenth, and at the Time of the assessing of the Holes, and he taxed for this Corn there, tho' he carries it into the other Vill after, according to the Prescription, and [it is] there taxed, yet they shall be charged where the first Tax was. 21 E. 3. 42. b.

2. But otherwise it had been, if he had brought the Corn after the Grant, and before the Taxing of the Holes according to the Prescription, and there had been taxed for them. 21 E. 3. 42. b. by Issue.

The Case was, that Fifteenth was

granted to the King, at

which Time

J. N. who inhabited in W.

had Corn

growing in H.

and before the

Fifteenth was

assessed, he cut

and carried

his Corn to W.

as he and his Ancestors had used to do Time out of Mind, and was assessed for that Corn and his other Corn in W. and yet was assessed for the same Corn in H. and the Collector distrain'd him, and he sued Replevin, and the other avowed for the Fifteenth &c. and the Issue was taken, If he had Corn in H. at the Time of the Assessment or not. Br. Quinzime. pl. 6. cites S. C.

(M. d) *How it may be levied.*

1. **A** Collector of a Fifteenth may levy all the Tax of a Town-ship upon the Goods of one Inhabitant only if he will, and the said Inhabitant shall have Aid of the Exchequer to make every other Inhabitant to be contributory. Cr. 8 Jac. Scacc. Per Curiam.

Manwood,

Ch. B. gave

it for a general

Rule for all Counsel-

lors at Law,

That they

did not advise any Collectors of Subsidies or Fifteenths, to bring Bills in the Exchequer Chamber for the Non-payment of Subsidies &c. for such Bills should not be allow'd hereafter, because they had Remedy by Distress. It was also holden, that if any be assessed for the Fifteenth which he ought to pay, or if two

Towns are to pay together, and the *one Town* is taxed more than it ought to be, or had been accustomed, those which are grieved by such Settlement may have a Commission out of the Exchequer, which is called *ad equaliter taxand*, and that was put in Use in a Case between *Bartale* and *Uind*, where one of them was Lord of the Town of Little Marlee, and the other of Hedford. And as to this Commission, *ad equaliter taxand*. *Munwood* and *Fanshaw* said, that they could shew above 20 Precedents. 4 Le. 185. pl. 186. *Tripl.* 32 *Eliz.* in the Exchequer. — 4 Le. 111. pl. 227. S.C. — S.P. 2 Inst. 79.

2. The King is not inheritable to the Fifteenth, but yet when it is granted, the King is inheritable to *disfranch* for it. Per *Hill* [and *Norton*.] Br. *Quinzime*. pl. 3. cites 11 H. 4. 35.

3. At a Convocation the Clergy gave to the King by the Hands of a Metropolitan, Two Shillings in the Pound of the Temporal Possessions of Religious, and Two Shillings in the Pound for the Tenths, in the Defence of the Church of England; and the Exchequer awarded *Fieri facias* against *Abbots &c.* to levy it. Br. *Quinzime*. pl. 1. cites 28 * H. 6. 11.

* Orig is
(E. 6)

Fol. 218.
See (I. c)

(N. d) Subsidy.

1. 1 R. 2. **A**T a Parliament, the Commons were spared, and the Nobles, Bishops, Abbots, Judges, Esquires, Parsons, Knights, Vicars, and all Spiritual Persons charged with the Subsidies. Speed 590.

2. 1 Or 2. Rich. 2. a Subsidy was granted, That every Man or Woman, under a certain Age, should pay by Poll 12 d. which was the pretended Cause of much Mischief after. J. *Strawe*. Speed. 594.

3. In Time of H. 8. a Subsidy was granted, to wit, the Tenth Part of all Temporal Subtance; And Cardinal *Woolsey*, who had the Charge to levy would [have] had every Man sworn for his Wealth, but the Citizens of London refused it, and the King was displeased with *Woolsey* for it. Speed 761.

4. 4. E. 3. 5. There was a special Grant, scilicet for every Knight &c. for every Trown an armed Man, to go into Gascony &c. and this pardoned by the King.

5. 18. E. 3. cap. 1, 2. Tenths and Fifteenths granted to the King to go into France; So that the Money levied of the same be dispended in the Business shewed to them, in this Parliament, by the Advice of the great Men thereto assigned: And that the Aids beyond Trent &c. be put in Defence of the North.

6. The Subsidy is uncertain, because it is set upon the Person in respect of his Lands or Goods, which commonly do ebb and flow. 2 Inst. 77.

7. *Auxilia* at the Time of the Confirmation of Charters &c. *25 E. 1. was a general Word, not only including Aids due by Law and Tenure, as Aid to make his Son a Knight, to marry his Daughter &c. But Aids also granted by the Free-will of the Subjects in Parliament, which afterwards were called Subsidies. 2 Inst. 528. in his Comment upon the Act of the Confirmations of Charters of the Liberties of England &c. made 25. E. 1: where Lord Coke says, That yet the Matter, upon which that Act was made, was never in quiet, until it was more particularly explained by divers Acts of Parliament, which we have drawn into one Body of a Law divided into several Branches. 1. No Man shall be charged to arm himself, or to find Men of Arms, or any Hoblers or Archers (other than those who hold by such Services, or Devoires of the King, or of other Lords) if it be not by common Consent, and grant in Parliament. 2. No Man shall be compelled to go to the King's War out of his Shire, but where Necessity of sudden coming of strange Enemies into the Realm. 3. No Man shall be charg'd to give any Wages either to the Preparers or

Conveyors

* See the
Statute at
(E. a)

Conveyors of Soldiers, or to the Soldiers, to go into Scotland, Gascoign, or elsewhere; but that Men of Arms, Hoblers, Archers, chosen to go into the King's Service out of England, shall be at the King's Wages from the Day they depart out of the Counties where they were chosen, till they return; which Acts of Parliament are but Declarations of the ancient Law of England: And according to this ancient Law, the Commons after the said declaratory Acts of Parliament did; when this Point concerning Maintenance of Wars out of England came in question, make their continual Claim of their ancient Freedom and Birth-right, as in 1 H. 5. and in 7 H. 5. &c. the Commons made Protestation that they were not bound to the Maintenance of War in Scotland, Ireland, Calice, France, Normandy, or other foreign Parts, and caused their Protestations to be entered into the Parliament Roll, where they yet remain; which in effect agreeth with that, which upon like Occasion was made in this Parliament of 25 E. 1. But here may be observed, that when any ancient Law or Custom of Parliament is broken, and the Crown possessed of a Precedent, how difficult a Thing it is to restore the Subject again to his former Freedom and Safety.

(O. d) Martial Affairs, *Justs* and * *Tournaments*.

1. ‡ **R**EX Comitibus Baronibus Militibus, & omnibus aliis hoc in-
stanti Die apud Kingston conventur. ad Tournamentum
ibidem habitum. Prohibemus vobis sub Pena Amissionis omnium Ter-
rarum & Tenementorum, que in Regno nostro tenetis, ne ibi vel alio
dicto Die vel alius Diebus turneare, Justos facere, Adventure quere-
re, seu alio modo ad Arma ire presumetis sine || licentia nostra speciatim.
E. 1. Rot. Pat. Memb. 15. Continuile Memb. 17. Statute 2. E. 1.
Rot. Pat. Memb. 19. 22. 24.

* It was call-
ed Tournam-
entum
d. curias, of
Tourney and
Winning, in
respect of
the Agility,
as well of
the Horse as
of the Man;

For in those Days this Deed of Chivalry was at Random, whereupon great Peril ensued. Therefore in the Reign of E. 3. for Safety — There is no Number to this Plea in Roll.

|| But if the King makes Proclamation, That there shall be *Justs* and *Tournaments* &c. And one kills an-
other in Justing &c. it is not Felony. Contra where it is without Command or Proclamation of the King.
Br. Proclamation pl. 15. cites 11 H. 7. 23 — Br. Corone. pl. 223. (229) cites S. C. per Fineux. —
S. P. 3 Inst. 56. cap. 8. cites 11 H. 6. 22. — S. P. 3 Inst. 160.

In the Reign of H. 2. it was enacted, that if in such Case one was slain it should be no Felony; For
that in a friendly Manner they contended to try their Strength, and to be able to do the King Service in
that Kind. Occasion should be offered. 3 Inst. 56. cap. 8. cites Mirror, cap. 1. S. 13. De. Adventures.

Bacon of Government, in his Second Book cap. 11. pag. 127, 128. says that this of Tournament
crowded at length among other Things to be under the Determination of the *High Court of Justice*, and gave
times under the *Statute*, the *Countable* of England, as well as another *Town* under the *Marshall*; And
calls it a *4 Sport*, not a *5*, like a *barren*, troubles the *Town*, but wounds the *Heart*, and being of as little
Utile a Commonwealth as of Benefit, is therefore laid aside.

(P. d) * *Murage*.

See (E) pl.
9 12. 14)

1. **A**ND the Petitions of Parliament of 18 E. 1. there is
a very Petition, Gives London petunt Muragium propter Detec-
riorationem Murorum; Rex non vidit quod sit Necessarium. 1. E. 2.
Rot. Pat. Part. 2. M. 17. Pro Murag. Lond. 4. E. 2. Rot. Pat.
M. 20.

* *Murage* is
a very *noisy*
Toll to be
taken of e-
very *Cart*,
Wagon, or
Horse laden

coming to that Town, for the defence of that Town with Walls of Defence for the Safety of the Town
in Time of War, Intercursion, Invasion, or Uprising, and is due either by Grant or Prescription. 2
Inst. 222 — But if a Wall be made which is not defensible, nor for Safeguard of the People, then
ought not this Toll to be paid, For the kind of the Grant or Prescription is not purchased. 1611
Murage is only a Toll payable for the Protection of Wall out of Things sold in Market over by the

tail, and does not lie in Grant but in Prescriptions. Dav. Rep. 13 a. Mich 5 Jac B R. in the Case of Customs.

There is no Number to this Plea in the Roll.

[2.] 23. E. 1. Lib. Parl. 104. Ad Petitionem Hominum Wigorum, quod Rex velit eis concedere Muragium pro Villa sua claudenda ad Securitatem ejusdem Villæ. Ita Responsum, fiat per.

(Q. d) *Tronage. Pesage.*

There is no Number to this Plea in the Roll.

[1.] **T** Ronagium debet dari de Lanis & Pesagium de Mercibus, and not Cronagium de Mercibus. Adjudged. D. 5. E. 3. B. R. Rot. 124.

(R. d) *Aulnage.*

Fol. 209 -

Prynne's
Cott. Rec.
Abr. 71. N^o
31, 32. S. C.

1. **R** D. C. Parl. 22. E. 3. R. 31, 32. There is a Petition of the Workers of Clothes of Worsted in Norfolk, against the Office of the Assay of the Aulnage of Worsted granted to Robert de Doley, which was after repealed by the Counsel of the King as there appears.

Prynne's
Cott. Rec.
Abr. 71. N^o
11 S. C.

2. Rot. Parl. 27. E. 3. R. 11. The Commons pray to take away the Office of Aulnage. Answer. They shall treat to give Recompence to the Officer.

Prynne's
Cott. Rec.
Abr. 76.
N^o 46

3. Rot. Parl. 25 E. 3. 1 Part. R. 40. The Commons pray that the Office of Aulnage be taken away.

Is [viz.] a Motion touching the Aulnage and Measure of Cloth. Answer, by a Special Statute made thereof in this Year.

4 25 Ed. 3. 1. All Manner of Cloths vendible, shall be measured by the King's Aulnager, or his Deputies, and all Cloths which shall be found of le's Measure by a Yard than the Assize shall be forfeited to the King.

An Informa-
tion was
brought a-
gainst the
Defendants,
wherein the
Informers
sets forth,
that on such
a Day and
Place, he
did seize as
forfeited, a
Cloth called a
double Bays,
and and ano-
ther called a
single Bays,
being Goods
of Persons
unknown,
made and
wrought to
sell and ut-
ter, and
which were
put to Sale,
not being
seal'd by
the Mark of

5. 27 Ed. 3. 4. Cloths shall not be forfeited, altho' they want of the Assize; but the King's Aulnager shall measure the Cloth, and mark how much it contains, and for so much as the Cloth wants of the Assize, an Allowance shall be made to the Buyer, and the Aulnager shall have for his Fee, an Halfpenny for a whole Cloth, and a Farthing for half a Cloth, and nothing for Cloths that are less; but Cloths offered to Sale before they are marked, shall be forfeited to the King, and taken into his Hands by the said * Collector or Aulnager, or by the Deputy of one of them, or else by the Bailiffs of the Town where such vendible Cloths not sealed shall be found.

6. There were several other Statutes concerning Aulnage, As 3 R. 2. cap. 2. which enacted, That if the Aulnager seal faulty Cloth, or seal it for more than it is, the Cloth shall be forfeited, and he punished. — And also, 13 R. 2. cap. 11. which exempted coarse Cloths from being of the Assize of other Cloths. — And also, 17 R. 2. cap. 2. which enacts, That every Man of the Realm may make and put to Sale, and sell Cloths, as well Kerfies as other, of such Length and Breadth as himself please, paying the Aulnage Subsidy, and other Devoyers, that is to say, of every Piece of Cloth after the Rate, notwithstanding any Statute, Ordinance, Proclamation, Restraint, or Defence made to the contrary, and that none shall sell or put to Sale any Clothes before that they be measured by the King's Aulnager, and sealed with the Seal to that ordained, upon the Pains contained in the Statutes thereof made, and that no Man shall put, meddle, cause, nor make other Disceit in the Clothes & Kerfies, upon Pain of Forfeiture of the same. — And also, 5 & 6 E. 6 cap. 6. which gives a Forfeiture of 20 s. for not paying the Aulnager's Fee, and

and prohibit Cloth to be exported without the Aulnager's and Owner's Seal. the Master, and the Seal of the Aulnager &c. *—And also the Act of 8 Eliz. 5 which enacts, That the Length of Linenshire Coths shall be marked, and that the Queens Seal shall be fixed thereto on Pain of Forfeiture, and also, that the Aulnager shall Seal no Cloth without Weighing, on Pain of 20 s. for every Pack.* *Contra Per-* *man Statuti* *&c. the De-* But since those Statutes there is a Statute made as follows, viz.

claimed Property severally to the said Bays, and severally demurred to the Information; The Question was, Whether the Subsidy of Aulnage was due for Bays by Virtue of the Statute of 27 E. 3. cap. 4, not being any of the Cloths mentioned in the Statute, and differing from them both in Weight, Length and Breadth? Hile Ch. B. said, That it would be hard to bring them within that Statute, for the Reason before mentioned, but there is a concurrent Statute made Anno 17 R. 2. cap. 2. which makes the Quantity a necessary Ingredient to the Subsidy; For 17 R. 2. proportions the Subsidy given by 27 E. 3. which settles the Duty only; and, agreeing with the other Judges in Opinion for the Plaintiff, said, He grounded his Opinion for the Duty upon 17 R. 2. the Words whereof are, (*Payne the Duty according to the Rate*) which Words bring the Statute of 27 E. 3. to that of 17 R. 2. and upon both these Statutes together the Duty arises, and the Penalty for Non-payment of it; and the Generality of the Words (*Cloth, as well Keefers as other*) comprise all; and there cannot be more comprehensive Words to include all Manner of Clothes; and by the Demurrer they are confessed to be Clothes as laid in the Information. Hard 205. 2 & Mich. 13 Car. 2. in Seacc. Vere, qui tam &c. v. Sampson & al.

* Powis, Turton, and Ward, Ch. B. held, that no Person had Authority to seize the Cloth forfeited by this Statute, but only those very Officers expressed in that Statute; and therefore they held, that a Deputy Aulnager whose Deputation extended only to the Counties of Devonshire and Cornwall, had no Authority to seize at Ratchiff. Carth. 326. Trin. 6 W. & M. in Seacc. Martin v. Urlesford.

7. 11 & 12 W. 3. cap. 20. S. 3. Enacts, that *the Subsidy and Aulnage of the old and new Draperies, and of all Woollen Manufacturies shall cease after the Grants thereof are expired.*—[Those Grants are long since expired.]

(S. d) Proclamation. The Force of a Proclamation.

1. **W**HEN in the Time of E. 1. the Jews were banished out of the Realm, all their Debts and Goods remained to the King, and were his Chattels, and thereupon Proclamatio solemnitas fiebat per totum Regnum, & quod omnes qui Debita aliqua alicui Judeo debebant aut de eorum Debitis, Bonis & Catallis aliquid sciebant, Domino Regi aut alicui de Concilio suo scire facerent, de qua quidem Proclamatione nullus dicere potest quin scivit aut scivisse debuit; And because the Defendant had concealed a certain Debt, Ideo in Miericordia. 21 E. 1. lib. Pacl. (2. b. 63. Adjudged.

2. Vide Egerton's *Posnati*, fol. 12. and 31 H. 8. cap. 8. concerning the Force of Proclamations. 35 H. 8. cap. 23.

3. By 2 H. 8. cap. 2. It is enacted, that the Lord Chancellor and others shall tax the Price of certain Victuals, and that after a Proclamation under the Great Seal shall be made thereon, and that Victuallers &c. shall be bound to sell according to the Prices set forth in the Proclamation under the Pains to be expressed and limited in the said Proclamation to be forfeited and levied to the Use of the King in such Manner as by the said Proclamation shall be declared.

4. By 25 H. 8. cap. 12. It is enacted, That Proclamation shall be made of the Deceit of Elizabeth Barton, and that it shall be contained in the Proclamation, that all Books &c. concerning the said Deceits shall be brought to the Ld. Chancellor, under Pain of Imprisonment and Fine to the King, and that every one [who] shall offend against this, being thereof by due Examination convicted before any of the Council of the King, shall suffer Imprisonment, and make Fine to the King by the Discretion of the Council of the King, and according to the Merits of his Offence.

5. 35 H. 8. cap. 16 The Statute of Strangers where there is a Provision that the Statute shall not be prejudicial to the Proclamation made by the King for the Payment of Custom by Strangers granted to endure for certain Years, but that the said Proclamation shall stand in the same Force as it is, and as if this Act had not been made.

† There is no such Year of Cycles in the Year Book to examine this by The Words (Rex

* Fol 210.

per totum) seem not to be right, and (Rex) at least, seem to be Surplusage; but the Sense seems perfect enough without any of them.

6. 27 E. 3. By the Statute of the Staple it was ordained, That Merchants aliens might carry over the Sea Merchandizes of the Staple, but not Merchants Denizens, and after by the Consent of the King and his Council, Liberty was granted, and Proclamation made accordingly to Denizens for a certain Time, and because Merchants Denizens doubteth them to be impeached in time to come for their Merchandizes which they have passed by * Virtue of such Grant and Proclamation, for as much as they were made out of Parliament, therefore it is granted now by Parliament in 34 E. 3. 3. cap. 21. 119. 36. E. 3. B. R. Rex per totum; Indictamentum diversorum pro Gravis transferendis in partes exteras contra Prohibitionem Regis per Proclamationem.

7. Hill. 1 E. 2. B. R. Rot. 38. Diversi implacitantur de eo quod contra Proclamationem Regis E. 1. inderent ne quis duci liceret extra Regnum Angliæ Equos, Armaturas, Monetam, quocunque Vasa Aurea seu Argentea in Malla sine Licentia &c. ipsi abducerant diversum Summs of Money &c.

8. The King by Proclamation may make the Coin of a Foreign Realm current here. 5 El. cap. 11. admitted.

Prynne's Cott Rec. Abr. 557.

No. 11 S. C.

The King by his Proclamation, or otherways, cannot change any part of the Common Law, Statute, or Customs of the

Realm; Nor can he create any Offence by Proclamation, which was not an Offence before, that being to change the Law, and therefore that which cannot be punished without Proclamation cannot be punished without it; And the Statute 31 H. 8. cap. 8. tho' it gives more Power to the King than he had before, yet it is there declared, That Proclamations shall not alter the Law, Statutes, or Customs of the Realm, or impeach any in his Inheritance, Goods, Body, Life &c. But if one be indicted for a Contempt against a Proclamation, he shall be fined and imprisoned, and so impeached in his Body and Goods. 12 Rep. 75. in the Case of Proclamations, cites Fortescue de Laudibus &c. cap. 9. 18. 34. 36. &c. — But a Thing which is punishable by Law, by Fine and Imprisonment, if the King prohibits it by his Proclamation before that he will punish it, and so to warn his Subjects of the Penalty of it: there, if he permits it after, this is a Circumstance which aggravates the Offence. But he cannot by Proclamation make a Thing unlawful which was permitted by the Law before; and this is well proved by the ancient and continual Forms of Indictments, which all conclude Contra Legem & Consuetudinem Angliæ, or Contra Leges & Statuta &c. But no Indictment was ever seen to conclude Contra Regium Proclamationem. 12 Rep. 75. Mich. 8 Jac. in the Case of Proclamations

11. A Proclamation prohibiting Importation of Wines from France upon Pain of Forfeiture is against Law, it not appearing that there was any War between the Realms. 2 Inst. 63. cites Pasch. 1 Eliz. in the Exchequer. German Cioll's Case.

12. Proclamations are so far just, as they are made Pro Bono Publico. Hob. 251. in Armistead's Case.

13. A Proclamation binds not, unless it be under the Great Seal. Cro. 2 Roll. R. 112. Hill. 5 Car. B. R. Keyly v. Manning. 112. Howard v. Slater.

(S. d. 2) Proclamation. *By whom made, and how pleaded.*

1. **W**HERE *Parishioners make By-Laws that every one shall pay a Sum for Reparation of their Church, and for Default of Payment to distrain by Assent &c.* there those who are absent, if Proclamation be made to do it, shall be bound as well as those who are present; Per Kirton; quod non negatur. And to see that a common Person may make Proclamation. Br. Proclamation, pl. 1. cites 44 E. 3. 18. *Br. Custom, pl. 6. cites 44 E. 3. 18. —None can make Proclamation but by Authority of the King or Mayors &c. who have Privilege in Cities and Burghs to do it, or have used it by Custom; and Sir Edmond Knightly Executor of sir William Spencer made Proclamation in certain Market Vills, that the Creditors should come by a certain Day, and claim and prove their Debts &c. due by the Testator; and because he did it without Authority, he was committed to the Fleet, and put to a Fine.* Br. Proclamation, pl. 10. cites 22 H. 8. —Ibid. pl. 1. cites S. C. But Brooke says in London they use to make Proclamation in the Name of the Mayor; and adds a Quere if it be by Custom or not. —Went. Off. of Executors 160. cites S. C.

2. The Court upon the first Motion were all of Opinion, That where a Proclamation is pleaded, it *must be pleaded to have been under the Great Seal*; for it doth not bind unless it be under the Great Seal; and if 'tis denied, there can be no Issue upon it, but only *Nulla tunc Record*, which cannot be unless he pleads it to be Sub Magno Sigillo. But afterwards it being again moved, Jones and Windham seemed to doubt thereof; because when it is pleaded, That such Proclamation was made, it shall be *intended duly made*; as in Relcous, if it be returned Quod fecit Warrantum, altho' it be not pleaded to be in Writing, yet it shall be intended. But it was answered, That true it is when it is but by Way of Inducement; but otherwise when it is the Subtance of the Plea. Whereupon it was adjourned. Cro. C. 180. Hill. 5 Car. B. R. Keyley v. Manning.

as if the Court gave no Regard thereto. See 2 Roll Rep. 172. Trin. 18 Jac. B. R. Howard v. Slater.

* (U. d.) King. [*Guardian.*]

* N B. There is no (U. d.) in Roll.

1. **I**N the Absence of E. 1 his Brother Edmund was made Guardian of the Realm. (Nota the Name of Guardian) 18 E. 15. b.
2. Leonell the second Son of E. 3. was Custos Regni. 21 E. 3. 59.

(X. d.) King. Guardian of the Realm. *The Power of the Guardian in the Absence of the King.*

1. 1 E. 2. Rot. Pat. Part 2. M. 28. Rex concessit Petro Gabeison Custodi Regni &c. potestatem ad concedendum Licentiam eligendi Pastores in Ecclesias Cathedrales & Conventuales & adhibendum Assensum Electionibus Nomine Nostro & Fidelitat. capiend. & Temporalia restituend. & Benefic. &c. conterend. & Ordinand. de Custodiis & Marit. giis.

See this Roll at large in the Appendix to Dr. Brady's Constitution of the History of England p. 14 No 2.

2. The

See some
Precedents
of such
Writs at the
beginning of
the above
mentioned
Appendix.

2. The Guardian of the Realm, in the Absence of the King, may present to the Advowson in Right of the King. 18 E. 3. 15. b.

3. When there is a Guardian of the Realm in the Absence of the King, the Writs Original shall be in the Name of the King. 21 E. 3. 58. b.

4. But the Teste shall not be Teste Meipso, but Teste L. filio nostro clarissimo Custode Angliæ. 21 E. 3. 59.

5. 14 E. 1. Rot. Claudio Memb. 3. 4. Teste Edmundo Comite Cornub. Consanguino Regis apud Westm. (This Edmund was Custos Regni.) and so 16 E. 1. Memb. 9. in Dorset & 7. in Dorset.

Fol. 211.

(Y. d.) King. *What Things shall go in Succession, and not to his Executor.*

* Br. Presentation, pl. 11. cites S. C.

In Quare Impedit it appears that

Chattles may descend to the King; for where the King has the *Temporality of a Bishop*, and dies, those, and all Presentations depending upon it, shall descend to the New King. Br. Chattles, pl. 2. cites 11 H. 4. 7. —† S. P. Br. Prerogative, pl. 85. cites 44 E. 3. 42. and the Executors shall not have them.

S. P. Br. Chattles, pl. 2. cites 11 H. 4. —

S. P. Br. Prerogative, pl. 81. cites 7 H. 4. 41.

Per Gascoigne for Law; for it is a Chattel Real annexed to the Crown.

2. So if the King be seised of a Ward, and dies, his Successor shall have it, and not his Executor. 7 D. 4. 42. b. 21 E. 3. F. Etropel 161.

3. The Treasure and other valuable Chattels, are so necessary and incident to the Crown, that in Case the King dies, they shall go with the Crown to the Successor, and not to the Executors. Co. 11. 92. Count Devon.

4. The King can have nothing in his natural Capacity, unless in Right of his Duchy, or an Estate Tail by the Statute De Donis, and Dutchy Lands would now be in the Queen, if not kept separate by Act of Parliament. Per Holt. Far. 78. Mich. 1 Ann. B. R. in Case of the Queen v. Smith.

(Y. d. 2) *Descent of Lands. How.*

The Reason of these Cases is; because the Quality of the Person does in these, and many other like Cases alter the Descent, so as the Lands and Possessions where-

IF the King hath Issue a Son and a Daughter by one Venter and a Son by another Venter, and purchases Land and dies, and the eldest Son enters and dies without Issue, the Daughter shall not inherit these Lands, nor any other Fee Simple Lands of the Crown, but the younger Brother shall have them; Wherein note, that neither Possessio Fratris doth hold of Lands of the Possessions of the Crown, nor Half Blood is no Impediment to the Descent of the Lands of the Crown. Co. Litt. 15. b.

2. If one that is King by the Descent of the Part of his Mother purchases Lands to him and his Heirs, and dies without Issue, this Land shall descend to the Heir of the Part of the Mother, but in the Case of a Subject, the Heir of the Part of the Father shall have them. Co. Litt. 15. b.

3. The

3. The *eldest Daughter and Sister* of a King shall inherit all his Fee of the King
Simple Lands. Co. Litt. 15. b. seised is in
 4. If the King purchases Lands of the Custom of *Gavelkind*, and dies, Jure Corona-
having Issue divers Sons, the eldest Son shall only inherit these Lands. ne shall te-
 Co. Litt. 15. b. Secundum
jus Corona-
attend

upon and follow the Crown, and therefore to whomsoever the Crown descends those Lands and Possessions descend also; For the Crown and the Land, whereof the King is seised in Jure Corone are Concomitantia. Co. Litt. 15 b.

5. The King has two Capacities; for he has two Bodies, of which the one is a Body Natural, consisting of natural Members, as every other Man is, the other is a Body Politick, and his Members thereof are his Subjects. He may take in his Body Natural, Lands or Tenements, as Heir to any of his Ancestors, and also in this Capacity may purchase to him and his Heirs, and his Heirs shall retain it notwithstanding that he is removed from the Royal Estate. And he may also take or purchase Lands or Tenements in Fee in his Body Politick, that is to say to him and to his Heirs Kings of England, or to him and to his Successors Kings of England; And so his double Capacity remains, as it does in other Persons, who have a double Capacity, As Bishop or Dean; And to prove that the Estate Royal does not * confound the other Capacity the Case in 45 Ail. 6. was cited, where it appears that King H. 3. gave a Manor to the Earl of Cornwall in Tail, saving the Reversion to him, and died; the Earl gave the Manor to another in Fee by Deed with Clause of Warranty in Exchange for another Manor, and after the Earl died without Issue having Affets, and the Warranty and Affets descended upon E. 1. being Heir to the Earl; And there it was adjudged, That the King, by this Warranty with Affets, was barred, by which the Assignee of the Alienee had Restitution of the Manor out of the Hands of King E. 3. who had seised the Manor into his Hands for the Reason aforesaid. Which Case proves that the Capacity, which the King has in his natural Body, remains after he is King, or otherwise the Warranty could not have descended upon him, nor the Affets to him as Heir to the Earl his Ancestor; and so by the Warranty and Affets which descended upon the Body Natural of the King, he was barred of the Reversion, which he demanded in his Body Politick; For it was Parcel of the Possessions of the Crown for any thing which appears; And as his Capacity remains to take by Descent as Heir, so it remains to purchase therein. Arg. Pl. C. 234. 3 Eliz. in the Case of Willion v. Lord Barkley.

*S. P. Per
 Weston J.
 Pl. C. 242.
 in S. C.

6. The King may take in his Body Politick, as King, to him and his Heirs, or as King to him and his Successors; For he may have Heirs in his Body Politick, and he may have Successors in his Body Politick; And therefore a Gift to him his Heirs and Successors is good to the Body Politick in both the Limitations; For if the Heirs fail, it shall go to the Successors; And his Heirs, as Heirs to the King, may take in their Bodies Politick. Per Weston. J. Pl. C. 242. b. in the Case of Willion v. Lord Barkley.

(Z. d) *King. In what Case by the Name of King, his Successors shall be comprehended.

*A Remainder limited to King H. by the Name of King H. is well limited to him by such Name, for the King naturally, only, and fully cannot

[1.] THE Successors of R. H. 8. are within the Statute 27 H. 8. cap. 24. of Resumption of the Liberry of Purveyance to have Benefit of the Statute, though they are not named; For they are included within the general Word King. Cr. 38. El. 3. R. † Lord Darcy's Case adjudged.

E e e

a. Patents

Purchase by other Name than by Name of King. For the Name of King has merged his Surname, and in the Name of King, his Surname and proper Name also are included. Per Brown J. Pl. C. 244 b Trin. 4 Eliz. in the Caf. of Willion v. Lord Barkley.

Lord Coke, in his Commentaries upon Magna Charta, cap. 1. says, That at that Time *Hæredes* were taken for *Succesores*, and *Succesores* for *Hæredes*. 2 Inst. 5. — S. P. Ibid. — that antiently *Succesores* and *Hæredes* were Synonima. — † There is no Number to this Plea in Roll. — ‡ Cro. E. 512. S. C.

2. Patents, without the Words (*Pro nobis, Hæredibus, & Succesforibus nostris*) and being granted for a *Corporal Exercise* of the Office or Service are good. Cited per Saunders Ch. Baron. Pl. C. 459. a. as Resolved by all the Justices. 28 April 1 Mar.

S. P. Pl. C. 1-6 Mich. 4 Mar in the Caf. of Hill v. Grange

3. The Words (*Per nos*) in the King's Grant are spoken by him in his *Body Politick*, and contain Heirs and Successors, without precise Mention. Per Saunders Ch. B. Pl. C. 458. a. Pasch. 16. Eliz. in Sir Thomas Wroth's Caf.

4. King H. 6. Anno 20. of his Reign, granted for himself, and did not say (for his Successors) *to the College of All Souls in Oxford, for them, their Tenants, and Farmers, to be discharged of Till*; It was agreed per Cur. That this Grant to be discharged was good against his Successors, though not named, as well as in Caf. of the Grant of an Interest, which in Plowd. Com. in Sir Thomas Wroth's Caf., was agreed to be good. Yelv. 13. Mich. 44 & 45. Eliz. B. R. Wood v. Hamstead.

*All the Barons in the Exchequer were of Opinion, that such a Grant of an Annuity should bind the Heirs and Successors of the King, notwithstanding the Oblivion, inasmuch as the *Body Politick* of the King is charged, which is perpetual, and never dies. Pl. C. 457 a. Trin. 15 Eliz. Sir Thomas Wroth's Caf. — S. P. Pl. C. 1-6 Mich. 4 Mar in the Caf. of Hill v. Grange.

5. A Grant by the King, without the Words (*Pro se & Hæredibus*) or (*Succesforibus*) of an * *Annuity, or Rent, Payable at the Exchequer, or by the Hands of any Receiver*, binds the Successor. Jenk. 209. pl. 41.

A Gift to the King passes the Inheritance without the Word Successor. So of a Gift made by the King. Jenk. 209. pl. 41.

A Gift to the King of any Hereditament is a Fee Simple, as a Gift to a Mayor and Commonalty, without mentioning Successors. By all the Judges of England. Jenk. 224 pl. 84. — S. P. Jenk. 271. pl. 89.

7. A Deed made to the King by the Words (*Carolo Regi*) or (*Regi Anglie*) passes the Inheritance to the Crown without the Word (Successors) Jenk. 124. in pl. 50.

Dyer Ch. J. said, That the adding of Successors in Grants to the King, is but of late Time, and a New Device. Pl. C. 250. Trin. 4 Eliz. in the Caf. of Willion v. Lord Barkley.

(A. c) * Council Privy of the King.

‡ The Council Board is a most Noble, Honourable, and Reverend Assembly of the King and his

1. † TR. 16. C. 2. B. R. Rot. 42. Baron de Bellomonte was committed to Prison for refusing to counsel the King, touching a Truce proposed between the King and the Scots, the said Baron being of the Privy Council of the King.

Privy Council in the King's Court or Palace; With this Council the King himself doth sit at his Pleasure; These Councillors consult of, and for the publick Good, and the Honour, Defence, Safety, and Profit of the Realm: It is called the Council Table, a *Consulendo*, Secundum Excellentiam. They are called *Concilium Regis Privatum*, *Concilium Secretum*, and *Continuum Concilium Regis*. The Number of them is at the King's Will, but of antient Time they were 12, or thereabouts. 4 Inst. 53. cap. 2

† My Lord Coke says, That the Duty of a Privy-Councillor appears by his Oath, which consisteth of these Articles or Parts. 1. That he shall, as far forth as Cunning and Discretion suffereth, truly, justly, and evenly counsel and advise the King in all Matters to be communed, treated, and demeaned in the King's Council, or by him as the King's Counsellor. 2. Generally, in all Things that may be to the King's Honour and Behoof, and to the Good of his Realms, Lordships, and Subjects, without Partiality, or Exception of Persons, not leaving, or eschewing it to do for Affection, Love, Meed, Doubt, or Dread of any Person or Persons. 3. That he shall keep secret the King's Council, and all that shall be communed by way of Council in the same, without that that he shall commune it, publish it, or discover it by Word, Writing, or in any otherwise to any Person out of the same Council, or to any of the same Council, if it touch him, or if he be Party thereof. 4. That he shall not for Gift, Stead, or other Cause, or

Promise of Good by him, nor by mean of any other Person, receive or admit from any Promotion, to favouring, nor for declaring, letting, or hindring of any Matter or Thing to be treated or done in the said Council. 5. That he shall, with all his Might and Power, help and strengthen the King's said Council, in all that shall be thought to the same Council for the universal Good of the King and his Land, and for the Peace, Rest and Tranquillity of the same. 6. That he shall withhold any Person or Persons, of what Condition, Estate or Degree they be of, that would by way of Fear, attempt or intend the contrary. 7. And generally, that he shall observe, keep, and do all that a good and true Councillor ought to do unto his sovereign Lord. By the Force of this Oath, and the Custom of the Realm, he is a Privy Councillor, without any Patent or Grant, during the Life of the King; that maketh choice of him. 4 Inst. 54. cap. 2.

2. Rot. Parl. 21 E. 3. M. 28. The Commons pray, that no People from henceforth by Suggestion, or Consideration of any Accusers voluntary be commanded by Writ to come to the Council of the King, and then be contrained and compelled to make Fine, or pay down a great Sum of Money, or otherwise to travel over the Sea as before this Time has been in Arreriment of all the People, pray that such Durellies and Grievances from henceforth be not done. *Answer.* It pleases our Lord the King, that henceforth such Lyings be not done against Reason.

Parre's
Cott. Re-
cords Abr.
56. 21 E. 3.
No. 28.

3. Rot. Parl. 22 E. 3. M. 4. Fifteenths granted upon diverse Conditions to be entred in Rolls of Parliament, scilicet, among others, That no Imposition, Tailage, nor Charge by way of Loan, nor other whatsoever Manner be laid by the Privy-Council of the King, without their Grant and Assent in Parliament.

4. Rot. Parl. 2. part M. 16. The Commons pray, that the * Loans which are granted to the King by divers Persons of the Commons be released, and that none from henceforth be compelled to make such Loans or Contributions against their Wills, for it is contrary to Reason and Franchise of the Land, and that Restitution be made † to those who have made such Loans or Contributions. *Answer;* It pleases the King that it be || so.

* Orig. in
(Appendix)

|| Rot. 212.

* Orig. in
(Finis)

5. Rot. Parl. 25 E. 3. 1. Part M. 16. The Commons pray, that no Man be put to answer of his Franktenement, nor of any Thing which touches Life and Member, Fines and Redemptions, by Appais before the Council of the King, nor before his Ministers whatsoever, unless by Process of Law thereof * heretofore used. *Answer;* It pleaseth the King, that the Laws be kept, and that none be bound to answer of his Franktenement, unless by Process of Law; but of Things which touches Life or Member, Contempts or Excess, be it done as has been used heretofore.

Parre's
Cott. Re-
cords Abr.
72. 25 E. 3.
No. 16.

* Orig. in
(enwere.)

6. Whereas diverse are accused, and are made to come before the Council of the King by Writ or other Commandment of the King, upon * grievous Dam against the Law, the Commons pray, that from henceforth if any Accuser proposes any Matter for the Profit of the King, that this Matter be sent to the Judges of the one Bench or the other, or of All thereof to enquire and determine according to the Law; and if it touches the Accuser or † Party, let him sue at the Common Law; and that no Man be put to Answer without Presentment before Justices, or Thing of Record, or by due Process and Writ original, according to the ancient Law of the Land; And if any Thing from henceforth be done to the contrary, be it void in Law, and held for Error. *Answer;* Because this Article is an Article of the Great Charter, the King willeth it. Rot. Parl. 42 E. 3. M. 12.

Parre's
Cott. Re-
cords Abr.
106. 42 E. 3.
No. 12.

* Orig. in
(Griet)

† Orig. in
(Parte cite fit
suit)

7. 1 H. 4. M. 160. The Commons pray, that no Action personal between Party and Party be held by Privy Seal before the Council of the King; and they in the Petition shew, that in the Time of R. 2. it was so done for Brocage made to some of the Council. *Answer;* By the Statute thereof made, held and kept there, where the one Party is so great and rich, and the other poor, that he cannot otherwise have to recover.

Parre's
Cott. Re-
cords Abr.
128. 1 H. 4.
No. 16. 18.
8. P. 2m No.
106. is about
17. page of
Wills

Prinne's
Court Re-
cords Abr.
410. 2 H. 4.
No. 69.

* This in
Prinne's
Court Rec.
Abr 418. is
a different
Point.

8. 2 H. 4. M. 69. The Commons pray, that all Writs or Letters of Privy Seal of our Lord the King directed to diverse Lieges of the King to appear before our Lord the King in his Council, or in his Chancery, or Exchequer, upon certain Pain comprized therein, be for ever hereafter ousted, and that every Liege of the King be treated according to the rightful Laws of the Land anciently used. Answer; Let not such Writ be made unless in Case where it seems necessary, and this by Discretion of the Chancellor or Council of the King for the Time being. Vide Sumile * 4 H. 4. M. 28.

9. Mr. Prynn, in his Animadversions &c. on 4 Inst. pag. 45. cap. 2. refers the Reader for the *ancient Jurisdiction* and Proceeding of the King's Council to Mr. William Lambard's Archaion. 108 to 116. Mr. Crompton's Jurisdiction of Courts, fol. 29 &c. The several Bundles of Petitions to the King and his Council in the Tower of London, and the Answers to them; Placita Parliamentaria coram Rege & Concilio in the Tally-Office in the Exchequer, and in the Parchment Book of them in the Tower under King Edward I. The first Part of my Brief Register and Survey of Parliamentary Writs p. 365 to 394. In what Cases and Things their Jurisdiction and Proceedings have been restrain'd and *taken away* since these Institutes were compiled by a special Act made in the Parliament of 17 Car. 1. cap. 10. Intituled, An Act for Regulating the Privy Council, and taking away the Star-Chamber Court, the Act itself will best inform you.

10. 6 Ann. cap. 6. S. 1. Enacts that *the Queen shall have but one Privy Council for the Kingdom of Great-Britain, and such Privy Council shall have the same Powers as the Privy Council of England had at the Time of the Union, and none other.*

11. 6 Ann. cap. 7. S. 8. Enacts that *the Privy Council for the Kingdom of Great Britain shall not be dissolved by the Death of her Majesty, her Heirs or Successors, but shall continue six Months, unless sooner determined by the Successor.*

Fol. 213.

(B. e.) Queen, [*Consort of the King.*]

1. **T**HE Queen, Feme of the King, may inform by her Attorney General in the Chancery by English Bill, to have a Decree made in the Court of the Queen confirmed. For tho' she be a Subject yet she hath such Prerogative of the King as that she is his Feme. M. 16. Ja. in Chancery. Sir Robert Floyde's Case, ruled upon a Murder.

2. 2 E. 1. Rot. Clauso Memb. 13. Conventio inter Reginam, Feme of the King, and a common Person for the enjoying of certain Land for Years, and the Queen fecit Attornatum, and the other appointed to be in proper Person.

3. 11 E. 1. Rot. Wallia Memb. 1. The King gave a Manor to the Queen his Feme, and her Heirs for ever, adeo integre & plene, as J. S. held it. Other such Grant. Memb. 3.

4. 2 E. 1. Rot. Wallia Memb. 2. The King granted to the Queen his Feme such Land ad vitam suam, ita tamen quod Maneria &c. a Corona Angliæ non separentur.

King E. 4.
gave certain
Lands to the
Queen his
Feme for

Term of her Life, and she leas'd it for Years; And so it seems that she has a Capacity to take of the Grant of the King, and she may lease alone without the King; And so see she is a Person exempt. Br. Non-ability pl. 61. cites 7 H. 1. — It was adjudg'd, that where H. 8. granted a Manor to the Queen his Feme for Life; there the Queen was a sole Person exempt by the Common Law, and may make lease or Grant without the King, and so may plead and be impleaded alone. 4 Rep 23 b. Trin 26 Eliz. in the Case of Clark v. Pennifather.

5. 11 E. 1. Rot. Chart. Memb. 5. The King granted to the Queen a Manor Habendum sibi & Hæredibus.

6. 3 E. 1. Rot. Chart. Memb. 4. In *Schedula Annua*. The Feme of E. 1. was obliged to Robert de Bohun in Mille libris ex Assensu & voluntate Domini Regis Domini nostri, and after Insperimus, and the King confirmed &c.

7. 9 E. 1. Rot. Chart. Memb. 4. Pro Johanne Ferrer, the Queen, Consorts Regis, * granted Manerium dilecto Militi nostro Domino Johanni Ferrer. * Orig is (Grantera)

8. 8 E. 1. Memb. 4. The Queen by Assent and Consent of the King granted a Manor &c.

9. 10 E. 1. Rot. Chart. Memb. 3. Part 16. Insperimus the Grant of the Queen of the Manor in Fee *Familiari Militi nostro Galfrido de Pichford*, which had been granted to the Queen and her Heirs by another &c. The King confirmed &c.

10. 11 E. 1. Rot. Chart. Memb. 4. The King confirmed a Grant which the Queen had made &c. 18 E. 1. Memb. 11. 20. according-ly of a Grant in Fee by the Queen.

11. 3 E. 1. Rot. Pat. Memb. 14. In *Schedula annua*. The King granted all Debts * whatsoever to his Wife. * Orig is (D'umite la la Feme)

it seems (la) should be (al.)

12. The King cannot grant to another for Life the Office of making Saddles for the Queen; because she is as a Feme sole, and so may elect own Officers. Dub. D. 6. Ia. B. between *Auburcurmull and Cure*.

13. In *Quare Impedit* by the Queen, the Writ wanted these Words, *Et nisi fecerit*. Thorp said the Queen is a Person exempt, and shall not be amerced for her Nonjuit; and therefore she shall not find Pledges de Prosequendo, and she shall have Writ of Form in all Points as the King shall have; and therefore the Writ was awarded good. Br. Nonability, pl. 59. cites 18 E. 3. 12. & Fitzh. Brief 355. Co. Litt. 133. a. cites S. C. — S.P. Co. Litt. 127.

14. In *Scire facias* it was admitted, that the King may give to the Queen certain Portion by his Letters Patents, by Division certain. And so see, that the Queen has a Capacity, tho' she be Feme Covert, and may take of her Baron; and this seems to be for Term of Life. Br. Nonability, pl. 58. cites 49 E. 3. 4. Br. Prescription, pl. 12. cites S. C.

15. In *Fermedon* the Tenant vouch'd the Queen and two others, as Heirs of the Duke of York, and shewed Cause by the Duke. Brian said the Queen is not a Person able to be vouch'd as here; for this is a Real Matter; but in Personal Causes she is exempt, and has Ability as a Private Person, and may make Gift or Lease for Term of her Life: And therefore by him the Tenant shall have just Aid of the King, and after of the Queen, but not of both together. And it was doubted if the Queen be a private Person exempted by the Common Law, or by Statute; for if it be by Statute, it ought to be pleaded; Per Brian; for it is a private Statute. But per Townsend, if she be exempt by the Common Law, the Tenant need not have Aid of the King. Br. Nonability, pl. 56. cites 3 H. 7. 14. * In Case of Aid Prayer of the Queen, it is *Domina Regina in capella*; and the Cause of the Aid Prayer shall not be counter-pleaded no more than in the Case of the King. Co. Litt.

133. b. —† The Queen Consort of the King of England is an exempt Person from the King by the Common Law, and is of Ability and Capacity to Purchase and Grant without the King. Co. Litt. 3. a. — Per Brian, The Queen is a Sole Person by the Common Law, but not to all Intents. Br. Aid del Roy, pl. 90. cites 3 H. 7. 14.

16. Suit by Petition does not lie to the Queen; for *Affise*, *Præcipe* *quod reddat*, and the like lies against her. Br. Nonability, pl. 60. cites 133. b.

11 H. 4. 67. Per Cur.

17. In *Quare Impedit* brought by the Queen, some say that *Plevarty* is no Plea no more than in Case of the King. Co. Litt. 133. a.

18. If any Bailiff of the Queen's bring an *Action concerning the Hundred*, he shall say *In Contemptum Domini Regis & Regine*. Co. Litt. 133. a. F I I 19 The

19. The Queen shall pay no Toll. Co. Litt. 133. b.

* This seems to be mis-printed, and that it should be, may[not] distrain &c. or otherwise

here seems an Inconsistency; and F. N. B. 235. (A) is that the Writ de De-onerando pro rata Portione is awarded to the Queen's Officers where they distrain one Tenant for the whole Rent, where he holds but Part of the Lands, and several other Tenants hold the Residue thereof.

20. If the Tenant of the Queen aliens a certain Part of his Tenancy to one, and another Part to another, the Queen * may distrain in any one Part for the whole, as the King may do; but other Lords shall distrain but for the Rate; and therefore where the Queen so distrains, there lies a Writ de De-onerando pro rata Portione. Co. Litt. 133. b.

21. The Writ of Right shall not be directed to the Queen no more than to the King, but to her Bailiff; otherwise it is when any other is Lord. Co. Litt. 133. b.

22. A Protection shall be allowed against the Queen, but not against the King. Co. Litt. 133. b.

S. P. Co. Litt. 131. a. 23. The Queen is not bound by the Statute of Markbridge for driving a Distress into another County. Co. Litt. 133. b.

24. If any do compass the Death of the Queen, and declare it by any overt Act, the very Intent is Treason as in the Case of the King. Co. Litt. 133. b.

2 Hawk. Pl. C. 425. cap. 44. S. 11. 25. Queen Consort, in Case of Treason by her, shall be tried per Pares, as Queen Anne, the Wife of H. 8. was. Pasch. 28. H. 8. in the Tower of London before the D. of Norfolk then High Steward. 2 Inst. 50.

26. It was adjudged, that where the Queen was Tenant for Life, and a Copyhold of Inheritance Escheats to her; there the Queen may grant it to whom she pleases, and this shall bind the King his Heirs and Successors for ever; For she was Domina pro Tempore, and the Custom of the Manor shall bind the King. 4 Rep. 23. b. Trin. 26 Eliz. in Case of Clark v. Pennifather.

* It was resolved, 1.

That this ought to be Sponte by the Subject sine Coactione, so that this ought to be

to be at the Pleasure of the Subject, whether he will offer, or give, or no. And for this all Fines upon Judgment, or by Offer or Fine for Alienation, or in any other Case where the Subject does not do it Sponte, sine aliqua coactione, viz. That the King of right ought to have it, there the Queen shall have nothing.

2. It ought to be Sponte sine Consideratione alicujus Reventionis seu Interesse, That the King hath in Esse in Jure Coronæ, and for this upon Sale or Demise of his Lands, or Wares, or Goods of Felons, Outlaws, & simili Casu, for these are Contracts and Bargains concerning the Revenues and Interests of the King; And it cannot be said in such Case, that the Subjects Sponte se obligant, as to purchase or buying any the Revenues or Interests which the King has.

3. It ought to be Sponte sine Considerationem, & non ex mera Gratia & Benevolentia Subditi; For that which is of mere Grace is not properly said of Obligation or Duty, and the Words of the Records are to have De iis qui sponte se obligant, and so it was ordained by the King and his Council, as appears by the Record of Hill. 4 E. 1. in Staccario &c.

4. It ought to be Sponte super Considerationem, quæ non attingat Reventionem seu Interesse Corona in any Thing which the King has. As if the Subject give to the King Sponte a Sum of Money for Licence in Mortmain, or for to create a Tenure of himself to have a Fair, Market, Park, Chase, or Warren, within his Manor, there the Queen shall have it; For the Subject did this Sponte, and was not constrained to it. And this does not concern any Revenue or Interest of the King. But if the King has a Fair or Market, or Park, or Warren, and grants it for a Sum of Money, there the Queen shall have nothing; For this was a Thing in Esse, and Parcel of the Revenue of the Crown; And by that it appears, that for as much as little or nothing is given in such Case where this of right is due, this is not now of any such Value as was pretended. And this Resolution was reported to our Sovereign Lord the King by Popham, in the Gallery at H. Intell. 12 Rep. 21. Pasch. 4 Jac.

(C. e) * Aurum Reginæ.

1. 15 E. 3. cap. 6. Item, That the Queen's Gold shall not run in Demand by reason of this Grant. This was upon the Grant of the 9th. Lamb Fleece and Sheaf by way of Subsidy. Rot. Parl. 15 E. 3. Dorset R. 60. for a Fifteenth.

2. 31 E. 3. cap. 13. *The Commons grant a Fifteenth to the King, and our Sovereign Lord the King hath granted to the said Commons, That the said Quinzim [being] so granted, no Gold shall be demanded nor levied to the Use of the Queen, but that the said Commons shall be thereof wholly discharged.*

Fol. 214

(D. e) * Monopolies.

1. Rot. Parl. 1. H. 5. R. 41. *The Commons pray, That all Merchants may export to any Place abroad, or import from any Place any Goods, (except those of the Staple) at their Pleasure, paying the Customs and other Duties due to you, any Proclamation to the contrary notwithstanding &c. Answer. The King will be advised by his Council.*

* A Monopoly is an Institution, or Allowance by the King by his Grant, Commission, or otherwise, to any Person or Persons, Bodies Politick or Corporate of or for the sole Buying, Selling, Making, Working, or Using of any Thing, whereby any Person or Persons, Bodies Politick or Corporate are sought to be restrained of any Freedom, or Liberty that they had before, or hindered in their lawful Trade. 3 Inst. 181. cap. 85.——

Hawk Pl C 221. cap. 79 S. 1.——The Difference between Monopoly and Engraving is, the one is by Patent from the King, the other is by Act of the Subject between Party and Party. Arg. Skin. 169. Pasch. 36 Car. 2. B R. in Case of the East India Company v. Sandys.

2. Monopolies are against the ancient and fundamental Laws of the Realm. 3 Inst. 181. cap. 85.——Generally all Monopolies are against Magna Charta, because they are against the Liberty and Freedom of the Subject and the Law of the Land. 2 Inst. 47.

(D. e. 2) Monopolies as to Printing, and of Suits relating thereunto.

1. **T**HE Patent for Printing Law Books, derived down to Col. Atkins, was to Print all Law Books that concern the Common Law, wherein No body else has an especial Privilege granted under the Great Seal of England. Afterwards an Agreement was made, in Pursuance of this Patent, with the Stationers, which was, That the Stationers should no longer Print Law Books, without the Assent of Col. Atkins. In arguing the Case of Printing Roll's Abridgment, being Licenced by the Judges, it was insisted and admitted by the Counsel of the Patentee in Parliament 1. That this Grant is no publick Grievance. 2. That the stopping the Impression, tho licenced by the Judges is justifiable. 3. That the Law Patentees may not Print Law Books without the Judges Licence. 4. That an Injunction out of Chancery against Printing such Book is Just and Right. The Words of the Act of 14 Car. 2. 33. whereby the Licencing of Books is enacted, say, That no Man shall Print a Book till it be licenced. Therefore there are two Things in this Clause. 1. That no Man can Print a Book till it be licenced. 2. The Licence must pursue this Act of Parliament. If I bring a Book to the Licencer, and he will not [licence it] I have no Remedy, not so much as an Action upon the Case, only a Recourse to the King to make Complaint. So that although this Abridgment be licenced by the Judges, yet if in Truth it be not licenced by the King to Print it, though the Book may well be Printed by Him that has Authority, yet he that has No Authority cannot. It is one Thing to licence a Book, by saying, This Book is fit for Publick View; And another Thing to say, This Book thus licenced shall

be Printed by any that can get it into his Hands. Licence to Print, goes to the Bookfeller or Printer; Licence to be Printed, goes to the King. Cart. 89. Mich. 18 Car. 2. in Parliament. The Stationers v. the Patentees about Printing Roll's Abridgment.

S. C. cited Skin. 234. 2. The Company of Stationers brought an Action against S. for Printing Gadbury's Almanack without their Leave. Upon a Special Verdict found, the Question was, Whether the Letter Patents granted to the Company for the sole Printing of Almanacks were good or not? The Court said, That *Almanacks might be accounted Prerogative Copies, and without Doubt, this might be granted by the King, and accordingly gave Judgment for the Plaintiffs, Nisi Causa &c.* 3 Mod. 256. Trin. 29 Car. 2. C. B. The Company of Stationers v. Seymore,

they thought it a hard Case. — A Question was, Whether the Grant of the Crown to the Company of Stationers to have the sole Printing of Almanacks, provided they were licensed by the Archbishop of Canterbury, and Bishop of London, were a good Grant, or void, because against the Liberty of the Subjects? It was argued in Favour of the Patent, that since the Art of Printing was found out, it has been more under the Care of the Crown than any other Art whatsoever. 1st. Because it was an Art introduced by the Care of the Crown; so said in *Carter's Case*, which gave the Crown a Property in the Trade. 2dly, Because of the Greatness of the Inconvenience, that may redound to the Publick, from the Mismanagement of the Press. In Cart. Rep. 89. the Controversy was about the Printing *Roll's Abridgment*, and was decreed in Chancery in Favour of the Patentees, and Decree confirmed in the House of Lords. Mich. 24 Car. 2. the Question was, about the Patent for sole Printing of all *Law Books*; Judgment against the Patentee in B. R. for the *Uncertainty of what shall be esteemed a Law Book*; but this Judgment was reversed in the House of Lords. 1 Mod. 256. *Sturmour's Case* full in Point, the same Objections made as here. In 34 Car. 2. *Company of Stationers v. Skinner*, Patent allowed for *Primmers, Psalters, Psalms, and Almanacks*. 34 Car. 2. in Chancery, *Company of Stationers v. John Gale*; No Decree, indeed, for Printing Psalms, Psalters, and Almanacks; But the Reason was, because the Person controverting the Patent, submitted without. 25 Jan. 34 Car. 2. *Stationer's Company v. Tilright*; Patent for Printing *Psalms* allowed. Mich. 33 Car. 2. *Stationer's Company v. Lee*, Another Patent for Psalms. Trin. 12 W. 3. *Stationers Company v.* Patent for Almanacks. In Stat. 9 Annæ, this very Patent now in Question was taken Notice of. And per Cur. the Patent for sole Printing of Law Books is not now to be shaken, having had the Sanction of the House of Lords. Monopolies are odious; this Case is therefore to be distinguished, by deriving to the Crown some special Interest in Almanacks. No Opinion was given; but to be spoken to again. 10 Mod. 106, 107. Mich. 11 Ann. B. R. in Case of *Company of Stationers v.*

S. P. 2 Chan. Cafes 76. 3. An Injunction was granted to stay the Selling of some Books imported from Holland &c. the sole Printing whereof belonged to the Company of Mich. 33 Stationers. 2 Show. 258. to 261. Hill. 34 & 35 Car. 2. the Company of Stationers v. Lee. Car. 2. The Stationer's Case. — 2 Chan. Cafes 93. Pasch. 34 Car. 2. S. C.

4. King Charles II. granted to the Plaintiff the sole Printing of Blank Writs, Bonds, and Indentures, for the Space of 30 Years. The Defendant was a Stationer, and the Company of Stationers had constantly for the Space of 40 Years last past, before this Grant, printed Blank Bonds, the Question was, Whether this Grant was good exclusive of all others? The Court said, That the King had a Prerogative to grant the sole Printing to a particular Person; but inclined, that the Patent was not good. 3 Mod. 75. Pasch. 1 Jac. 2. B. R. Earl of Yarmouth v. Darrel.

5. King Charles I. grants to the University of Oxon, Power to Print *tam Libros content. in the Charter granted by King James to the Stationers of London Quam alios non prohibitos*. In an Action brought against P. by the Stationers of London, he pleads these Letters Patents of Car. I. The Court inclined for the Defendant, for this is a Prerogative of Power annexed to the Person of the King, which he could not grant so, but that he may resume; otherwise it is of the Grants of an Interest; but *Advisare vult*. Skin. 233 to 236. Pasch. 1 Jac. 2. B. R. Company of Stationers v. Parker.

6. In 8 Ch. I. there was a Patent granted to the University of Oxford to Print Bibles and other Books not prohibited. 30 May, 8 Car. the Patent is confirmed, and limits that there shall be but two Presses and three

Printers. The Plaintiffs claim as the King's Printers under several Patents continued down by mesne Assignments, and bring their Bill to restrain the Defendants from Printing Bibles &c. The Lord Keeper was of Opinion, That it *was never meant* by the Patent to the University, *that they should Print more than for their own Use*, or at least but some small Number more to compensate their Charge; but as they now manage it, they would ingross the whole Profit of Printing to themselves, and prevent the King's Farmers of the Benefit. However, he said, That the Validity of their Patents was a *Matter proper to be determined at Law*, and the Plaintiffs were now proper only for a Discovery, and therefore ordered, that the Plaintiffs should bring an Action at Law in B. R. against the University, or those who claimed under the University, and that it should be tried at the Bar, and the Defendants were to admit that they had Printed a competent Number of Bibles at the Trial. And tho' the Plaintiffs press'd much for an *Injunction* to stay the University Printers, yet the Lord Keeper *refused* to grant it; because, if it should be found for them, they would receive a Prejudice which he could not compensate, nor make good to them. 2 Vern. 275. Mich. 1684. Hills & al. v. the University of Oxford & al.

7. Serjeant Hawkins says, It seems to be the better Opinion, That the King may grant to particular Persons the sole Use of some particular In-
 243 says, That neither the Serjeant's Authorities, which are Mod 256.
 employment, as of Printing the Holy Scriptures, and Law Books &c. whereof an unrestrained Liberty would be of dangerous Consequence. Hawk. Pl. C. 231. S. 6.

3 Keb. 792. [Trin. 29 Car. 2. B. R. The Stationer's Company v. Seymour] & 3 Mod. 5. [Pasch. 1 Jac. 2. Earl of Yarmouth v. Darrel.] nor his Reasons seem to carry any great Weight with them; That as to the Case of the Company of Stationers v. Seymour, which is moit to his Purpose, the Action was brought against Seymour, for printing an Almanack, which was there held to be the proper Copy of the Company of Stationers only with some trifling Additions concerning the Weather &c. Besides, the Act of 13 and 14 Car. 2. against Printing without Licence was then in Force; as it was also, when that Judgment in the House of Lords, cited in that Case, was given against one who printed a Law Book, from the Patentee [And after other Things, he says] But further, the Patent for printing Law Books as it stands at this Day, does not at all prevent the Inconveniences Mr. Hawkins would redress; For these Books are never perused by any of the Learned before they are put to the Press; and if the *Maxims of Ten Thom, or De Mor Debitis* came to their Press under the Title of Law, I dare undertake, the Patentees would make no Scruple of printing them as such; therefore if it should be admitted to be reasonable that some learned Man of the respective Professions of Law, Divinity and Physick &c. ought to peruse every Book before it goes to the Press, this is far from being a Reason for establishing such a Patent as is contended for; If there be any dangerous Consequences to be apprehended, they must arise from the Books not being perused by a Man of Judgment, appointed by Authority, and not from the Printing them by this or that Man; For let the Book be first perused, and have the Sanction of an Imprimatur, the Printing will be probably better performed, and the Publick better used, where there are several Shops to go to, than where we are tied up to one; For in this last Case, whatever Hardships, or unfair Dealing we meet with, it may be difficult to find Redress.

[As to the Law-Patent, I believe I may confidently affirm, that there is not one Individual Gentleman of Learning in the Profession, but thinks the Patentees have most grossly abused it, to the great Dishonour and Disreputation of the Law, and the great Injury of the Body of its Professors. Whence arises the great Disesteem entertained by Foreigners of our Laws, but from the many trifling, paltry Books, which the Patentees, from a Plenitude of Power, which they flatter themselves to be invested withall, as well as Want of Modesty, and decent Regard to their Superiors, and in Defiance and Contempt of the Profession, have from time to time ushered into the World? And nothing probably can secure the Honour and Dignity of our Laws, but putting a Stop to these Licentious Practices, by restraining the Patentees from publishing any Book, within the Compass of their Patent, without the Sanction of an Imprimatur; And under such Restriction I am inclined to think the Patent may prove not prejudicial to the Publick.]

(E. e) *In what Cases it may be granted. And what is a Monopoly.*

1. A Monopoly granted to a Man of the sole making of Cards S. C. argued
 within the Realm is void, and against the Common Law Nov. 1753 to
 and divers Statutes, because it is an Hindrance of Trade. Co. 11. S. C. argued
 G g g Monop. and Adj. Arg.

ed. 11 Rep. *Monop.* 56. See the same Case argued. Tr. 44. between *Dunlop and Allen*.
 84 b to 88. b Trin. 44
 Eliz. Hawk Pl C. 231. cap. 79. S. 5 — Mo. 671. S C — S Rep. 125. S. C. cited — 2 Inst. 47.

A Grant to any particular Corporation of the sole Importation of any Merchandize is void, whether such Merchandize be *fr libited or not*, as being against the

2. If a Statute pro bono Publico restrains the Importation of divers Manufactures, because the Subjects ought to apply themselves to the making of them, now if the King grants the sole importation of them to one or divers (without any Limitation) notwithstanding the Act, This is a Monopoly against the Common Law, and the Intenc of the Statute. Co. 11. *Monopolies* 53.

Freedom of Trade, and discouraging Labour and Industry, and restraining Persons from getting an honest Livelihood by a lawful Employment, and putting it in the Power of particular Persons, to set what Prices they please, all which are manifest Inconveniencies. Hawk. Pl. C. 231. cap. 79. S. 2, 3.

Hawk. Pl. C. 231 cap. 79. S. 4 says it has been resolved for the like Reason as in the Note on pl. 2 and 3 above.
 Jo 231.
 Hill. 6. Car. B. R. the S. P. was adjudged. *Mounson v. Lyller*
 Hawk. P. C. 231 cap. 79. S. 4.

3. As where the Statute of 3 E. 4. Enacts that none shall import any Cards &c. if the King grants to a Man, that he shall import, notwithstanding the Act; This is a Monopoly, and void by the said Act. Co. 11. 88.

4. If the King grants by Patent the sole ingrossing of Wills and Inventories in the Prerogative Court J. S. This is a Monopoly, and is void; For it takes away the Liberty of the Subject, who may ingross it himself, or any other whom he pleases. At the Parliament of 15 and 19 Jac. Resolved in *Sir Robert Fludd's Case*. And the Patent, adjudged by the Parliament to be a Grievance, and Sir Robert Fludd put out of the House for a Projector.

5. If the King grants by Patent the sole making of Bills, Pleas, and Briets in the Council of York to J. S. for a certain Fee, where before the Attorneys used to make them, and to have the Fees, by which new Fees are allowed to the Attorneys; This is a void Patent, and a Grievance. For this is a Monopoly; For by the same Reason, by several Patents, the sole making of Bills and Declarations, may be limited to certain Persons in every Court of Westminster, and so Lawyers utterly excluded to make any of them. At the Parliament 18 and 19 Jac. Resolved in *Lepton's Case*, and his Patent adjudged a Grievance; For it is against Reason that every one shall be compelled to shew his Evidence to one Man, and upon Oaths which he shall have the View of the Evidences of both Sides, which is not Reason.

6. In 50. E. 3. John Peachie of London was severely punished for procuring a Licence under the Great Seal, that he only might sell sweet Wines in London. 3. Inst. 181. cap. 85.

7. King Philip and Queen Mary, by their Letters Patents, granted to the Mayor, Bailiffs, and Burgessees of Southampton and their Successors, (for that King Philip first landed there) that no Wines called *Malmsey*, brought into this Realm from the Parts beyond the Seas by any liege Man or Alien, should be discharged, or landed in any other Part of the Realm, but only at the said Town and Port of Southampton, with a Prohibition, that no Person or Persons shall do otherwise, upon Pain to pay treble Custom; And it was resolved by all the Judges of England, that this Grant made in Restraint of the Landing of the same Wines was against the Laws and Statutes of this Realm, viz. Magna Charta, 29. 30. 9 E. 3. cap. 1. 14 E. 3. 25 E. 3. cap. 2. 27. & 28 E. 3. Statute of the Staple. 2 R. 2. cap. 1. and others; And also that the Assesment of Treble Custom was against Law, and merely void; And after at the Parliament holden in Anno 5 Eliz. the Patent, as to Aliens, was by a private Act confirmed by Parliament, and not for English. 3 Inst. 182. cap. 85.

Salk. 446.
 Edgeberry v. Stephens. S. P. — In such Cases it is good,

8. The Judges have hitherto allowed of Monopoly Patents, where any Man by his own Charge and Industry, or by his own Wit, or Invention, doth bring any new Trade into the Realm, or any Engine tending to the Furtherance of a Trade, that never was used before; And that, for the Good

of the Realm; That in such Cases the King may grant him a Monopoly Patent for some *reasonable Time*, until the Subjects may learn the same, in consideration of the Good that he doth bring by his Invention to the Commonwealth; otherwise not. Noy 192. Arg. cites 9 El. Hattings's Case.

being intal-
ed for Incon-
venient of
Ingeny;
But the Sta-
tute 21. Jac.
1. cap. 2. S. 1.

restrained it to the Term of fourteen Years, it being presumed, that after that Time, it will be a known Trade. Per Parker Ch. J. Wm's Rep. 183. Hill. 1711. B. R. in the Case of Mitchell v Reynolds.

9. A Patent was granted for *sole making Frisadoes*, upon Suggestion of bringing the Skill of making them into England, and a Forfeiture was given of the Goods and of 100 l. one Moiety to the King, the other to the Patentee, upon any Offender; Thereupon an Information was exhibited in the Exchequer against several, who demurred, For that it was against Law to have such *Penalties of the Goods and 100 l.* to be forfeited by Force of Letters Patents. And the Court being of Opinion against the Patentee, he exhibited his English Bill, in the Exchequer Chamber against them, where upon the Examination of the Cause, it appeared, that some Clothiers did *make Baies very like to the Patentee's Frisadoes*; And that they *used to make them before the Patentee's Patent*; for which Cause they were neither punished nor restrained from making their Baies like to his Frisadoes. Noy 182, 183. Hattings's Case.

So where a
Patent was
granted to
A. for the
sole making
of *Knives
with Bone
Hafes, and
Plates of
Lattis*; Be-
cause, as the
Patentee sug-
gested, he
brought the
first Use
thereof from
beyond Seas;

yet nevertheless, when the Wardens of the Company of Cutlers shewed before some of the Council, and some learned in the Law, that they *used to make Knives before, though not with such Hafes*; and that such a *little Difference* or Invention should be no Cause to restrain them; thereupon he could never have Benefit of this Patent, although he laboured very greatly therein. Noy 113. Maitley's Case.

The *Difference* is between a Grant to particular Persons for the sole Use of a *Trade Invention*, and a *New Invented Art*, See Wm's Rep. 183. by Lord Ch. J. Parker Hill. 1711. in the Case of Mitchell v Reynolds — Where the *New Invention*, for which a Patent was granted, is only a Varying in the Form of making it, and not in Substance, the Patent was adjudged void Arg. 2 Brownl. 114. Noy 9 Jac. in the Case of Croft v. Westwood, Cites the Case of Hattings and Johnston.

10. If a Man has brought in a *New Invention*, or a new Trade, within the Kingdom, in Peril of his Life, and Consumption of his Estate or Stock &c. Or if a Man has made a *new Discovery* of any thing, In such Cases the King, of his Grace and Favour, in Recompense of his Coits and Travail, may grant by Charter to him, That he only shall use such a Trade, or Traffick, for a certain Time; Because at first the People of the Kingdom are ignorant, or have not the Knowledge or Skill to use it; But when that Patent is expired, the King cannot make a new Grant thereof; For when the Trade is become common, and others have been bound Apprentices in the same Trade, there is no Reason that such should be forbidden to use it. Godb. 254. pl. 351. Patch. 12 Jac. B. R. in the Case of Cloathworkers of Ipswich.

Roll Rep.
4. 5. in the
Case of
Ipswich and
Sherrington

11. A Patent for *Greenland* is good, because it was found at great Peril of the Life of the first Finder. Arg. Roll. R. 5. in the Case of the Taylors of Ipswich v. Sherring.

12. The Patent to the College of Physicians, that none practise Physick, but such as are allowed by them, had not been good, if not confirmed by Act of Parliament. Per Croke J. and agreed to by Coke Ch. J. Roll. R. 5. in the Taylors of Ipswich Case.

13. 21 Jac. 1. cap. 3. S. 1. Enacts, That all Monopolies, Commissions, Grants, Licence, Charters, and Letters Patents, granted to any Persons, Bodies Politick, or Corporate, for the sole Buying, Selling, Making, Working, or Using of any Thing within this Realm, or of any other Monopolies, or Power, or Liberty, to dispense with any others, or to give Licence to do, use, or exercise any thing against the Tenor of any Law or Statute, or to give any Warrant for such Dispensation or Licence; or to agree or compound with any others for any Penalty limited by any Statute, or of any Grant of the Benefit of any Forfeiture, or any Sort of Money, that shall be due by any Statute before Judge-ment thereupon had; And all Proclamations, Inhibitions, Restraints, War-

This Act is
forcible and
vehemently
perpetrated
the Inven-
ting all Mo-
nopolies; or
Monopolies
in the small
was never
without Law
but never

without Friends. *rants of Assistance, and all other Matters and Things whatsoever, tending to the Instituting, Erecting, or Furthering the same, shall be void.*

3 Inst. 182. cap. 85. — *This Word [Sole] is to be applied to five several Things, viz. Buying, Selling, Making Working, and Using, four of which are special, and the last, viz. (sole using) is so general, as no Monopoly can be raised, but shall be within the Reach of this Statute; and yet for more Surety these Words (or of any other Monopolies) are added, and by reason of these Words [sole using] divers Provisions are made by this Act as hereafter shall appear. 3 Inst. 182. cap. 85.

† As the Words before are general, so these Words (of any thing) are of a large Extent, and this Word causeth some Exceptions hereafter to be made, whereof we shall speak in their proper Place. 3 Inst. 282. cap. 85.

S. 3. All Persons shall be disabled to have any Monopoly, or any such Grants as aforesaid.

*Such a Privilege as is one Year or under, to the Inventors thereof, where they are not *contrary to Law, or any way † prejudicial to the Commonwealth, are saved, so also are such as have been heretofore granted, for more than twenty-one Years, good for twenty-one Years from the Date of their Patent, notwithstanding this Statute.

and essentially newly invented; But if the Substance was in Esse before, and a new Addition thereunto, though that Addition make the former more profitable, yet it is not a new Manufacture in Law; And so it was resolved in the Exchequer-Chamber Patch. 15 Eliz. in *Bircott's Case* for a Privilege concerning Preparing and Melting of the Lead Ore; And there it was also resolved, That if the new Manufacture be substantially invented according to Law, yet no old Manufacture in Use can be prohibited. 3 Inst. 184. — Hawk. Pl. C. 233. cap. 79. S. 15, 16, 17.

† It may be mischievous to the State, by raising of Prices of Commodities at home. In every such new Manufacture that deserves a Privilege, there must be *Cogens Necessitas, & Exidens Utilitas*, Neither must it be to the Hurt of Trade, nor generally Inconvenient; There was a new Invention found out heretofore, that Bonnets and Caps might be thickened in a † *Fulling Mill*, by which means were might be thickened in one Day, than by the Labours of 80 Men, who got their Living by it; It was ordained, That Bonnets and Caps should be thickened and fulled by the Strength of Men, and not in a Fulling Mill; For it was held inconvenient to turn so many labouring Men to Idleness; If any of these Qualities fail, the Privilege is declared void by this Act, and yet this Act, though they have all these Properties, sets Monopolies in no better Case than they were before this Act, 3 Inst. 184 — †[So a Mill for Sawing of Timber &c. erected in or near Southwark was ordered to be demolished for the like Reason many Years since; And for the like Reason, Printing is said to have been prohibited in the Turkish Empire.]

*The Cause wherefore the Privileges of new Manufactures, either *S. 6. Neither shall this Act extend to Grants of * New Manufactures hereafter to be made to the Inventors thereof for 14 Years or under, being not contrary to Law, or prejudicial to the Commonwealth, † nor to Grants heretofore confirmed by Act of Parliament, so long as such Acts continue in Force.*

before this Act granted, or which after this Act should be granted, having these seven Properties were declared to be good, was, for that the Reason, wherefore such a Privilege is good in Law, is, because the Inventor bringeth to and for the Commonwealth a new Manufacture of his Invention, Costs and Damages; and therefore it is Reason, that he should have a Privilege for his Reward (and for the Incouragement of others in the like) for a convenient Time; But it was thought that the Time limited by this Act were too long for the private, before the Commonwealth should be Partaker thereof, and such as served such privileged Persons by the Space of seven Years in making and working of the new Manufacture (which is the Time limited by Law of Apprenticeship) must be Apprentices or Servants still, during the Residue of the Privilege, by means whereof such Numbers of Men would not apply themselves thereto, as should be requisite for the Commonwealth, after the Privilege ended; And this was the true Cause, wherefore both for the Time past, and for the Time to come, they were left of such Force, as they were before the making of this Act. 3 Inst. 184.

A Grant of a Monopoly may be to the first Inventor by 21 Jac. And if the Invention be new in England, tho' the Thing was practised before beyond Sea; (For the Statute speaks of new Manufactures within this Realm) So that if it be new here, it is within this Statute; Because the Act intended to encourage new Devices useful to the Kingdom, and whether learned by Travel or by Study, it is the same Thing. 2 Salk. 447. says it was agreed by Holt and Pollexfen, in the Case of *Edgebury v. Stephens*.

† This was added, For that the City of London, and other Cities and Boroughs &c. have some Privileges for buying, Selling &c. by Acts of Parliament; For Example, the Statute of 1 & 2 Ph. & Mar. giveth a Privilege to Cities, Boroughs, Towns Corporate, and Market Towns, for the Sale by Retail of certain Wares and Merchandizes, and some other Acts of Parliament in the like Case; All which do prove, that such Privileges could not be granted by Letters Patents. But specially this Clause was added in respect of the Generality of these Words (sole using) 3 Inst. 184, 185.

By this Provision, not only the *S. 9. This Act shall not be prejudicial to London, or any other Corporation, for any Grant made them concerning their Customs, nor any Corporation.*

Company, or Fellowship of any Art, Trade, or Mystery, nor to any Company or Society of Merchants, for the ordering of any Trade.

Grants, Charters, and Letters Patents.

ments, to any City or Town Corporate &c. But also the Customs used within the same, are excepted out of this Act, which seemeth to be more than needed, because the first Clause of the Purview of the Act doth extend but to Commissions, Grants, Licences, Charters, and Letters patents 3 Inst. 185.

S. 10. *Neither shall it extend to any Grant of Privilege for Printing, Digging, or Making or Compounding of Salt Petre, of Gunpowder, or Casting, or making of Ordnance, or Shot for Ordnance, nor to any Grant of any Office now in being, other than such as are decreed by the King's Proclamation.*

So as to the Thing by this branch excepted, four Things are required.

S. 11. *Nor to any Privilege of Digging, or Making of Allom.*

S. 12. *Nor to the Liberties of Newcastle concerning Sea Coals, nor to Licensing of Taverns, so as the King receive the Benefit.*

1st. That it be an Office, This extendeth only to lawful Offices.

S. 13. *Nor to the Patent granted to Sir Robert Mansfield for making of Glass, nor to that granted to James Maxwell Esq; for Transformation of Calveskins.*

lawful Office for divers Causes.

S. 14. *Nor that of Abraham Baker, for making of Smalt; Nor to that of Edward Lord Dudley, for melting of Iron Exwer, and making the same into Cast Works or Bars, with Sea or Pit Coals.*

1. It was necessary to exempt lawful Offices.

in respect of these Words [sole using] 2. Offices are Duties, so called, to put the Officer in mind of his Duty. 3. That which is void and against Law, is no Duty, unless it be Not to use them. 4. Such as are erected against Law are Monopolies and Oppressions of the People, and no Offices. 5. In Acts of Parliament, Lawful Offices are intended, as in like Cases has been often adjudged; There are unlawful Offices are all taken away by this Act, and lawful Offices remain and continue; secondly, That it be an Office heretofore erected; By this Act the Erection of all new Offices, which were not erected before this Act, are wholly taken away. Thirdly, That it be now in Being, and put in Execution. Tho' the Office was erected before this Act, yet if it were not in Being, and put in Execution, the 19th Day of February, in the 21st Year of the Reign of King James (at which Time this Parliament begun) it is clearly taken away by this Act. Fourthly, That it be such an Office as hath not been decreed, that is (for so is the Record of Parliament, and not (decreed) as it is in the printed Book, by any of his Majesty's Proclamations; For all such Offices as be decreed, that is, either forbidden or prohibited by any of his Majesty's Proclamations, or where the Party grieved is left to his Remedy at the Common Law by any Proclamation, they be also decreed; for being contrary to the Laws of this Realm, as it is declared and enacted by this Act, they are also decreed with a Witness, and can never be granted hereafter; The fifth Proviso, concerning the Making of * Allom, or Allom Mines, needed not; for they belong to the Subject in whose Ground forever the Ore is; And therefore any Privilege thereof cannot be granted, but in the King's own Ground. The sixth Proviso concerns the Hoffmen of Newcastle &c. This Clause was inserted in respect of these Words [sole using] The rest of the Provisos concern particular Persons, and do exempt and except certain supposed Privileges out of the Purview and Penalty of the Law, but leaveth them of like Force and Effect, as they were before the making of it; but it is to be observed, that all the Provisos, after the sixth, extend only to the supposed Privileges therein particularly mentioned, already granted, and not to any to be granted hereafter 3 Inst. 185.— * Hawk. Pl. C. 234. cap. 79. S. 23.

14. In Trespas for seising a Ship &c. whereby the Plaintiff lost his Voyage, the Defendant justified under the *Canary Patent* granted by the King to such Persons to have the sole Trade; But the Plaintiff had Judgment; For the King cannot grant that the Subjects Goods shall be forfeited for doing a Thing prohibited by Patent. Sid. 441. Hill. 21, & 22 Car. 2. Horn v. Ivy.

15. It has been often resolved, That *Custom may create a Monopoly*, as the Case in the Register is, that none should exercise the Trade of a Dyer in Rippon without the Archbishop of York's Licence. Vent. 196. Pasch 24 Car. 2. in the Case of Broadnox.

S. C. cited by Id. Ch. J. Parker Wm's Rep. 184 in Case of Mitchell

v Reynolds. — S. C. cited 1 Le. 143. 199. in Case of Sir George Farmer v. Brook. — S. C. cited Ow. 67 in Case of Sir George Farmer v. Brook.

16. The East-India Company brought a Bill in Chancery, setting forth their Letters Patents, and the great Charges they were at in making Leagues with Princes, and building Forts, and maintaining Forces in India; and the Defendants having traded thither, the Plaintiffs prayed a Discovery what the Defendants had traded for, and that they might be compell'd to bear a proportionable Part of the said Charge. The Defendants pleaded, answered and demurr'd: They pleaded that they were free Merchants, and set forth the Statute of 21 Jac. 1. and that they were free Merchants.

S. P. in Case of East India Company v. Smith 1701 Hill. 1702 Lord K. North said that they were free Merchants.

tion that this Patent was a Monopoly, and said that if it be now reduced into fewer Hands, and so become a Monopoly, it is hard to say when it became such; and compared it to the Nuisance of the Buildings in London; there no one can say when it became so, or which particular House first made it such. And said that it is to be observed, that the Words of the Statute of Monopolies are, That there shall be no Monopoly within this Kingdom; and said that what Influence that might have on this Case, was worthy Consideration.

17. In a special Action on the Case the Plaintiffs declared, that in the Reign of H. 4. there was a Society of Merchants-Adventurers in England, and that afterwards Queen Elizabeth did incorporate them by Name of *The Governor and Company of the Merchants Adventurers &c.* with Privilege to trade to Holland, Zealand, Brabant, Flanders &c. prohibiting all others not free of that Company &c. and that the Defendant, not being free of the said Company, did trade there without their Authority, and imported Goods from thence Ad damnum &c. The Defendant pleaded the Statute of Ed. 3. that the Seas shall be open to all Merchants to pass with their Merchandize whether they please; and upon Demurrer to the Plea, the Question was, Whether the King had a Prerogative to restrain his Subjects from trading to particular Places? See the Arguments on both Sides; but it does not appear that any Judgment or Opinion of the Court was given. 3 Mod. 126. Trin. 2 Jac. 2. B. R. *The Company of Merchants-Adventurers v. Rebow.*

18. In Trover of a Ship, the Jury found, That Cha. 2. granted to the African Company *all the Regions, Countries &c. from Sally inclusive to Cape of Good Hope inclusive, with all Islands near adjoining to those Coasts &c. and all Ports &c.* to hold to them and their Successors for 1000 Years, with Licence for them and no others, to send Ships &c. and to have all Mines of Gold and Silver there &c. and the intire and only Liberty to trade there, any Law or Statute to the contrary notwithstanding, and prohibiting any to trade there, unless by Licence first had, under Pain of Imprisonment during Pleasure, and the Forfeiture of Ships and Goods &c. with Power to search and seize &c. one Moiety to the King, and the other to the Company; and erected a Court of Judicature for Hearing and Determining all Cases of Forfeiture and Seizure for trading thither. The Company by Virtue of this Grant authoris'd certain Persons to seize the Ships &c. of such as should trade in an Infidel Country within the Limits of that Company. Accordingly the Defendants seiz'd the Plaintiff's Ship and Goods, and at the Defendant's Instance there was a Process in the Admiralty against the said Ship; and none appearing for her there, she was condemned; but whether the Defendant be guilty, the Jury say they know not, Et si &c. pro Quer. Damages to 4300 l. and Costs to 2 l. 3 s. 4 d. Et si pro Defend &c. This special Verdict was obtained at the Importunity of their Majesty's Counsel for the Defendant. It was adjudged for the Plaintiff by the whole Court. Show. 135 to 145. Hill. 1 W. & M. (where is a long Argument prepared by the Reporter) *Nightingale v. Bridges.*

19. 2 W. & M. S. 2. cap. 9. Enacts that *Letters Patents for the sole Making of Brandy or Spirits from Malted Corn &c. as a new Invention, are declared void.*

(E. e. 2) Monopolies. Tried where, and How.

1. 21 Jac. 1. **E**NAcTs, that *all Commissions, Grants, Licences, Char-* This Act
cap. 3. S. 2. ters, Letters Patents, Proclamations, Inhibitions, Re- having de-
straints, Warrants of Assistance, and other Matters and Things tending to clared as
a Monopoly, shall be examined, heard, tried and determined by, and according against all
to the Common Laws of the Realm, and not otherwise. Monopolies;
 &c. to be
 void by the

Common Law, hath provided by this Clause, that they shall be Examined, Heard, Tried and Determined in the Courts of the Common Law, according to the Common Law, and * not at the Council-Table, Star-Chamber, Chancery, Exchequer-Chamber, or any other Court of like Nature, but only according to the Common Laws of this Realm, with Words Negative, (and not otherwise;) for such Boldness the Monopolists took, that often at the Council-Table, Star Chamber, Chancery, and Exchequer Chamber, Petitions, Informations and Bills were preferred in the Star-Chamber &c. pretending a Contempt for not obeying the Commandments and Clauses of the said Grants of Monopolies, and of the Proclamations &c. concerning the same; for the preventing of which Mischief this Branch was added, 3 Inst. 182. 183. cap. 85. — * Hawk. Pl. C. 232. cap. 79. S. 11.

(E. e. 3) Judgment. And recovered, what.

1. 21 Jac. 1. **E**NAcTs, That *the Party grieved by Pretext of any of the* By this
cap. 3. S. 4. Matters or Things aforesaid, shall recover (in one of the Branch these
Courts at Westminster) treble Damages and double Costs; in which Suit no Things are
Essoin or other Delay shall be allowed, nor any more than one Imparlayce. provided and
 enacted, 1st,
 Remedy is

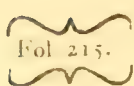
given to the Party grieved at the Common Law by Action or Actions to be grounded upon this Statute. 2dly. This Remedy may be had * in the Court of the King's Bench, Common Pleas and Exchequer, or any of them at the Election of the Party grieved. 3dly. The Party grieved shall recover treble Damages and double Costs. 4thly. No Essoin, Protection, Wager of Law, Aid Prayer, Privilege, Injunction, or Order of Restraint, to be allowed in any such Action. By [Aid Prayer] is intended as well the Writ De Domino Rege inconsulto, as the usual Form of Aid Prayer; for both are to one End, and (Order of Restraint) was added for the Council-Table, Star-Chamber, Chancery, Exchequer-Chamber, and the like. 3 Inst. 183. cap. 85. — * Hawk. Pl. C. 232. cap. 79. S. 13.

S. 4. *If any Person or Persons shall, after Notice given &c. cause or pro-* This Clause
cure any such Action to be stayed or delayed before Judgment, by Colour or extends to
Means of any Order, Warrant, Power, or Authority, save only of the Court the Privy-
wherein such Action shall be brought and depending, the Person or Persons so Council,
offending shall incur the Danger of Premunire &c. Star-Cham-
 ber, Chan-
 cery, Ex-

chequer-Chamber, and the like; and likewise to those that shall procure any Warrant &c. from the King &c. And so it was resolved by a Committee of both Houses before this Bill passed; but it extendeth not to the Judges of the Court before whom any such Action shall be brought; For before Judgments, Days must be given by Orders of Court &c. 3 Inst. 183. cap. 85.

S. 4. *Or after Judgment had upon such Action shall cause or procure Exe-* This Clause
cution of, or upon any such Judgment to be stayed by Colour or Means of any is more ge-
Order, Warrant, Power or Authority, save only by Writ of Error, or Attaint, neral than
the Person or Persons so offending shall incur the Danger of Premunire &c. the former,
 being the
 fifth Clause,

for this extendeth also to the Judges of the Court where the Action is brought or depending, if any Stay or Delay be used by them after Judgment; and so it was resolved as is aforesaid. 3 Inst. 183. cap. 85. — Hawk. Pl. C. 232. cap. 79. S. 13.



(F. c.) *Intruder. In what Cases a Man shall be said an Intruder.*

1. **W**HERE the Determination of the Lease appears of Record, the Reversion being in the King, the Lessee shall be an Intruder by continuing of the Possession after. *M. 32. 33. El. B. R. Per Manwood.*

S.P. Hard. 25.
Arg. cites 35
H. 6 & Br.
Coron. 188.
See (H b)
pl. 1 S. C.—
Mo. 295.
S. C.

2. If a Lessee for Years of the King holds over his Term, he is not a Tenant at Sufferance, but an Intruder. *M. 32. 33. El. B. R. Per Manwood. Agreed.*

3. If the King leases for Years rendering Rent at the Exchequer, or to his Receiver, upon Condition for Nonpayment, that his Estate shall be void, and the Lessee doth not pay the Rent at the Day by which his Estate is void, If he continues his Possession of the Land after, yet he is not any Intruder till Office found, but is only Bailiff de son Tort, because it does not appear of Record that his Estate is determined; for he might pay the Rent in Paise to the Hands of the Receiver. *M. 32. 33. El. B. R. Per Manwood, in Sir Mogle Finch's Case.*

4. But if the King lease for Years upon Condition that if the Lessee does not surrender, the Lease shall be void, If he does not surrender at the Time by which his Lease is void, he shall be an Intruder before Office found; because the Forfeiture appears of Record. *M. 32. 33. El. B. R. Per Manwood.*

5. Where the King grants the Custody of Land and Heir of a Ward, and a Stranger enters, This is an Intrusion upon the Possession of the King; for he remains in Possession, and shall make Livery at full Age. *Contra of Entry upon Tenant for Term of Life, the Reversion to the King; for the one has Franktenement, and may have Assise, and the other not, and has only Chattle.* Br. Intrusion, pl. 12. cites 4 H. 6. 11. Per Cur.

Br. Office
devant &c.
pl. 25. cites
1 H. 7. 17.
S. C.—
But where
the Tenant of
the King
alien without
Licence, there,
if Office be
found.

6. Where Tenant of the King dies, his Heir may enter till Office be found; for he cannot intrude before Office, which finds the Dying seised of the Ancestor; for the King has no Possession before Office, which finds his Title, but after Office he cannot enter but by Livery of the King; and upon Office found for the King of the Dying seised of the Ancestor, there the Heir shall answer the Profits by him taken before; for the Office shall have Relation to the Death for the Profits, but he shall not be an Intruder but by Entry after Office. Br. Intrusion, pl. 18. cites 1 H. 7. 18. and M. 26 H. 8. accordingly.

Years after, he shall not render the Profits but from the Time of the Office found; note the Diversity, but such Entry by Purchase is not called an Intrusion but a Trespass; and so are the Words of the Pardon thereof, That we pardon the Trespass aforesaid. Br. Intrusion, pl. 19. cites 33 H. 8.

7. If the King, having no Title by Matter of Record or otherwise, enters upon me, and puts me out, there, if I enter again, my Entry is lawful, and no Intrusion; so tho' there be a Record, if the Record gives him no Title. *Fin. Law 8vo. 201.*

8. The Queen by Letters Patents made a Lease of the Parsonage of D. for 21 Years; An Information of Intrusion does not lie for detaining the Tithes by a Parishioner, unless they were severed from the 9 Parts; Per Manwood Ch. B. And per Shute J. The Reason is, because the Queen has no Interest to sue for the Tithes during the Years; but the Lessee may sue in the Spiritual Court, or in the Court of Pleas by Quo Minus, or, as he said, by English Bill. But if the Tithes are severed, and a Stranger takes them, the Queen may have Information, but not an Assize; for she is not out of Possession of her Franktenement, and therefore

tis Intrusion to her, and Trespas to the Party. And as a common Person Letfor may have Aftise on an Ouster made to the Tenant for Years, fo may the Queen have Intrusion. Quod Curia concessit. Savil. 68. pl. 142. Patch. 25 Eliz. Anon.

9. The King being seised of the Manor of Beverly in the County of York, in Fee. In Jure Coronæ, a Stranger erected a Shop in a vacant Piece of Land of the Manor, and took the Profit thereof without paying any Rent to the Queen for the Shop. The Queen granted the Manor in Fee to the E. of Leicester, and he never enter'd into the Shop nor took any Rent thereof. The Occupier of the Shop died in Possession of it, and his Son enter'd. It seem'd to Whiddon, Saunders, Dyer, and Catlin, that this was no Defect, but Manwood and Wray, Serjeants, e contra. D. 266. pl. 10. Mich. 9 & 10 Eliz.

— Ibid. cit. H. 21 Eliz. B. R. *Bury v. Goodman*, that where A. intruded upon the King, who granted it over to B. and A. continued Possession, and died seised; the best Opinion was, that this does not take away the Entry of B. For the Court gave Day to Coke, who argu'd that the Entry was toll'd, to shew Cause why Judgment should not be given against him.

10. It was found by Office, that one F. Tenant of the Queen in Capite, died seised of the Manor of D. in the County of Essex; R. F. his Heir, being of full Age, tender'd his Livery; but before it was sued out he made Feoffment in Fee, by Deed inroll'd, to J. B. and others, to the Use of himself for Life, and after of his Feme for Life, with other Limitations over. It was mov'd, If any Fine should be paid, inasmuch as the Feoffment seem'd to be void. Manwood said, It seem'd to him, that a Fine should be paid, and that the Feoffment is good. But Shute, Contra; For here he has intermeddled with the Land before his Livery sued, which is an Intrusion. But otherwise it is of Bargain and Sale by Deed indented and inroll'd, or Fine levid, which is a Barr to the Party and his Heirs. Manwood and Clinch said, There will be a Diverlity between Feoffment and Fine and Deed inroll'd. Quære. Sav. 32. pl. 77. Mich. 24 & 25 Eliz. Franks's Case.

11. If one intrudes upon the Possession of the King, and another enters upon the Intruder, he shan't have Trespas for that Entry; for Trespas can't be brought but by one that has Possession. But in such Case he has no Possession; for every Intruder shall answer to the King for his own Time, and every Intrusion supposes the Possession to be in the King. Per omnes Just. præter Periam. And Rhodes Justice said, and cited 19 E. 4. to be, that he can't say in an Action of Trespas, Quare Clausum suum fregit. 4 Le. 184. pl. 234. Mich. 30 Eliz. C. B. Anon.

Godb 130.
pl. 153 S. C.
If the Queen's
Lessee is ousted
by a Stranger,
yet, tho' he is
out of Posses-
sion, he may
assign over
his Term.

For the Pe-
version being in the Queen, he cannot be out of Possession but at his Pleasure. Cro. E. 275. Wingate v. Mark.

(F. e. 2) Statutes relating to Intrusion on the King.

1. 17 E. 2. 13. Prerog. Reg. When the King's Tenant in Chief dies, and Fine levied by his Heir enters into the Land before he hath done Homage to, or received Seisin of the King, he shall thereby gain no Freehold; and if he dies seised during that Time, his Wife shall not be endowed thereof; As it fell out in the Case of Mansel the Marshall.

the King, is void; for the Statute is, that he shall thereby gain no Freehold &c. But if he levy a Fine without intruding, this is good. Per Husley and the Chief Baron; for the Franktenement is in Lim. Br. Fines. pl. 86. cites 1 H. 7. 5.

Possession of

[Before this Act] The ancient Course of the Exchequer has been, that if in an Information of Intrusion into Lands or Tenements, the Defendant pleads Not Guilty, he shall lose the Possession; and it is said, that the Reason of this Course is, First, For that regularly the King's Title appeareth of the Record, and therefore the Defendant may take Knowledge thereof; and the rather, for that in every Information of Intrusion it is specified of whose Possession the Lands &c. were; but if the Defendant pleads Not Guilty, the King's Learned Counsel cannot know the Defendant's Title, to provide to answer the same; as the Defendant may do to the King's Title. 4 Inst. 116. cites D. - El. 238. — D. 238. b. pl. 3. Pasch. - El. Sir R. Leigh v. Audson was upon the pleading a Que Estate of a Term, which was alledg'd to be insufficient if the Attorney-General had demurr'd upon it; but he having travers'd the Original Leate, and that being found against the Queen, it is too late now to take Advantage thereof; for which Reason Judgment was given against the Queen. Mich. 7 & 8 Eliz.

(F. e. 3) Intrusion. Proceedings, Pleadings, Judgment &c.

Keilw. 201.
a. b. pl. 16.
Mich. 11 H.
3. S. C.

1. **A**N Information of Intrusion lies for the King in the Exchequer upon Office found, *altho' the Record be not there* but in Chancery, or with the Escheator, or their Executors. It is sufficient, that there was such an Office found. By the Judges and the Counsel of the King. Jenk. 199. pl. 14.

2. Information of Intrusion was for intruding into a certain Portion of Tythes of the Rectory of D. in the County of Lancaiter. The Defendant pleaded *Non intrusit*; whereupon a Commission was pray'd to examine Witnesses who are not able to come to the Court. But Manwood denied it; for this Information is to prove a Title for the Queen, and is in the Nature of an Inquisition, and is not to try the Right; but had it been to try the Title of the Defendant upon a Bill whereto the Defendant had answered, and that they had proceeded to Issue, then he might either join in Commission or have Commission alone; and that so it was in a Case of the Earl of Northampton, in Trinity Term, where certain Commissioners had certified a Chantry with certain Tenements; to which the Defendant answer'd, that it was a Chapel of Ease, and pray'd a Commission to prove it, and it was denied. Sav. 4. pl. 10. Pasch. 22 Eliz. Norris v. Butler.

3. Information of Intrusion is exhibited by Name of Outground, New Midd. Marsh, alias Marsh. The Defendant pleads Not Guilty, and gives in Evidence the Letters Patents of Stebunheath Marsh. The Jury nor the Court is not to intend this to be the Marsh contained in the Information, but the Defendant ought to have pleaded the Letters Patents Verbatim, and aver that the Marsh vocat. Stebunheath Marsh contain'd in the Letters Patents, and the Marsh contained in the Information are One and the same &c. And if they will take Advantage of its being reputed or known to be so, they shall aid themselves by pleading the Patent, and saying, that they were reputed Time out of Mind &c. and not say, that at the Day of the Date of the Letters Patents they were so reputed; or otherwise, to shew how once they were Parcel, and how they were sever'd, and how they came to the King again; as it was in the Case of the Earl of Leicester. But to say, that the Jury or the Court shall seek the reputed Thing, is not Reason. Per Manwood, Ch. B. Sav. 45. Pasch. 25 Eliz. Anon.

4. *General Informations* for Intrusion in *certis Terris et Tenementis*, are as good as *Trespass Quare Clausum fregit*, which is used in *Trespass* at Common Law, which does *not express a certain Quantity of Acres*; and cited the Case of *Hines* in Plowden's Commentaries, which is *Quod cum Domina Regina fuit seiscita de certis Terris, Vastis &c.* Per Manwood Ch. B. Sav. 48. Pasch. 25 Eliz. Anon.

5. Information was for Intrusion into 100 Acres of Land and 40 Acres of Wood &c. The Defendant pleading Not Guilty, the Jury found him Guilty in 20 Acres of Land and 12 Acres of Wood, and as to the rest Not Guilty. It was moved in Arrest of Judgment, that it is *not certainly found in what 20 Acres of Land and 12 Acres of Wood the Defendant had intruded*, So that the Court knew not into which to put the Queen in Possession. But, Per Manwood, Ch. B. This shall be at the Apportionment of him that prosecuted for the Queen; and if he enters into other Lands or Woods than those in which the Queen has Interest, at his own Peril be it. And this he said was the Opinion of the Justices in the Star-Chamber. Sav. 28. pl. 67. Trin. 24 Eliz. Attorney-General v. Ayleworth.

6. Where Information of Intrusion is for intruding into Lands or Tenements, and taking the Profits &c. and the Defendant is found Guilty, the Judgment shall be *Quod convincatur* without any Judgment for Damages. But where 'tis for Intrusion and cutting of Trees, or taking other Things which are valuable, the Judgment shall be *Quod reddat Damna &c.* Per Manwood, Ch. B. and agreed by Fanshawe the Remembrancer. Quare. Savil 49. pl. 103. Pasch. 25. Eliz. Anon.

7. Information was in the Exchequer for intruding into the Manor of D. in the County of E. The Defendant pleaded to *Issue* which was found for the Queen, and Judgment was pray'd for the Queen. Manwood, Ch. B. said, they need not be so hasty, for there was no Danger, for if the Defendant die there is no Prejudice to the Queen; for every *Verdict* is as Judgment for the Queen, *Ad quod fuit concessum*. Sav. 57. pl. 123. Pasch. 25 Eliz. Anon.

8. If in an Information of Intrusion the Defendant pleads a Gift in Tail, Lease for Life, or Years, it suffices for the Queen to deny the Lease without maintaining her Title; for the Defendant confess'd the Title in the Queen, if his Lease be not good; and therefore to deny the Lease is sufficient. Per Shute, Baron. To which Manwood and Clenche agreed. Sav. 64. pl. 136. Pasch. 25 Eliz. in the Case of the Attorney-General v. Lord Berkley.

9. An Information was exhibited for intruding into certain Lands called W. The Defendant said, That 16 H. 8. one M. L. the Defendant's Mother was seised of the Tenements in the Information in her Demesne as of Fee, and she died thereof seised, and they descended to the Defendant &c. and proved How, and traversed the Intrusion. Shute said, This Descent shall not bind the Queen, and therefore it is no Plea. But Savil said, This Descent is made before the Queen had Possession, viz. 16 H. 8. and is therefore good. Manwood Ch. B. asked, If they would have a Descent 40 Years past and more to make a Title against the Queen, and said it was not reasonable; therefore bid them to amend their Plea. Sav. 45. pl. 97. Hill. 35 Eliz. Ex Relatione Becket v. Lacy.

10. *Information of Intrusion is not Real but Personal*, and to be resembled in all Points to *Trespass*; For it supposes the King in Possession, as Action of *Trespass* supposes a Subject, and the Land is not demanded nor recoverable, but Damages only as in *Trespass*, and the Defendant is to be fined *Si convincatur de Intrusione* as in *Trespass* if he be found Guilty of Entry, *Vi & Armis*. Arg. Mo. 375, 376. Mich. 36 & 37 Eliz. in Perrot's Case.

A Bill of Intrusion is but in Nature of a Possessory Action, as an Action of *Trespass*:
Per Man-

wood Ch. B. Le. 48. pl. 49. in Case of the Queen v. the Ld. Vaux & al.

(G. e) Office. In what Cases the *Estate of the King* shall be *devested without Office*.

Cro. E. 639. to 642. S. C. by Name of *Hemphley v. Price*. **I**f a Man by Deed inrolled lease Land to J. S. for Life, the Remainder in Fee to the King upon Condition, that if he pay a certain Sum of Money to the Lessee, that then he may re-enter, and after he pays the Money he may well re-enter upon the Lessee, and *devest the Estate of the King without Office*; For all the Ceremony of the Condition is to be done to the Lessee, and the State of the King depends upon it; between *Hemphley and Price*, per Curiam.
 In the Performance of the Condition, the Entry is lawful upon the Tenant for Life; and the Frank-tenement being defeated, the Queen's Estate is defeated; For she is the Person against whom the Freehold was demandable and recoverable.

Cro. E. 639. to 642. S. C. by Name of *Hemphley v. Price*. 2. But if Land be given to the King by Deed inrolled upon Condition, if the Condition be broken the Donor cannot enter without Office; For the Estate which commences by Matter of Record, ought to be defeated by Matter of Record. *M. 40, 41. Cl. B. R. per Cook.*

Jo. 323. Trin. 13. Car. B. R. S. C. says, That it was resolved, that a Grant of the Reversion by Deed inrolled is a good Revocation of the Uses limited in Remainder to the King without Office or any other Act. —
 Cro. C. 472. S. C. 3. If a Feoffment or other Conveyance of Land be made to the Use of one for Life, with divers Remainders over, the Remainder in Fee to the King, with a Power to the Tenant for Life to revoke the said Uses, and to limit new Uses. He may revoke the said Uses, and thereby *devest the Estate of the King in Remainder, and limit new Uses, because the Estate is in the King, but Quoutque &c. and limited.* *Hill. 11 Car. B. R. between Snape and Turton. Adjudged per Curiam. Intr. Cr. 11 Car. Rot. 1137.*

4. If Escheator seizes Ward for the King to which I have Title, and not the King, I may re-take him; Contra if it be found by Office for the King; Quod Nota bene. Br. Prerogative, pl. 83. cites 4 H. 4. 15. Per Hank and Hul.

5. General Livery cannot be but upon Office found, but Special Livery may be without Office, and without proving of the Age; but there he shall be bound to a Rate and Sum certain to be paid to the King. Br. Livery, pl. 56. cites 28 H. 8.



(H. e) In what Cases the Estate shall be *void* without Office.

See (H. b) pl. 1. — S. P. And per Manwood Ch. B. The Lease is merely void and determined in Right in Privy, and in Tenure; for so is the Pleasure of the Prince expressed in the Letters Patents, That it shall be then void, and of no Effect. And Judgment was given accordingly against the Lessee 2 Le. 134 to 145. 33 Eliz. in the Exchequer Sir Moyle Finch's Case.
If the King lease for Years, rendering Rent at the Exchequer, and for Non-payment the Estate to be void. upon Non-payment the Estate shall be void without Office; For this is in Nature of a Limitation, and the Non-payment appears of Record. Dub. between *Roxstone and Cinnock. M. 3 Ja. B.*

(H. e. 2) Limitation. Statutes of Limitations as to the Prerogative. Concealed Lands &c.

1. at Jac. 1. **E**NACTS, that the King, his Heirs or Successors, shall ^{Before the} not hereafter sue, impeach &c. any Person &c. ^{making this} for or ^{Statute in} concerning any ^{Respect of} Manors, Lands, Tenements, Rents, Titles, or Hereditaments, (other than Liberties and Franchises, or the Issues and Profits ^{of that ancient} which concern the same) nor make any Right, Claim, or Demand of, in, or to the ^{Prerogative} same, by Reason of any Right or Title accrued 60 Years past and more, and ^{of the} now in Effc; ^{Crown, that} ^{Nullum} ^{Tempus oc-}

currit Regi, the Titles of the King were not restrained to any Limitation of Time; for that no Statute of Limitation that ever was made, did ever limit the Title of the King to any Manors, Lands, Tenements, or Hereditaments to any certain Time; and where many Records and other Monuments, making good the Estate and Interest of a Subject, either by Abuse or Negligence of Officers by devouring Time were not to be found; by Means whereof, certain indigent and indigent Persons prying into many ancient Titles of the Crown, and into some of later Time concerning the Possessions of divers and sundry Bishopricks, Dean, and Chapters, and the late Monasteries, Chauntries &c. of Persons attainted, and the like have passed surreptitiously in Letters Patents, oftentimes under obscure and general Words, the Manors, Lands, Tenements and Hereditaments of long Time enjoyed by the Subjects of this Realm, as well Ecclesiastical as Temporal; Now to limit the Crown to some certain time, to the End, that all the Subjects of this Realm, their Heirs and Successors, may quietly have, hold and enjoy, all and singular Manors, Lands, Tenements and Hereditaments, which they, their Ancestors, or Predecessors, or any other, by, from, or under whom they claim, have of long time enjoyed, This Act was made and moved from the House of Commons; the Body whereof consists of three Parts, First, that Part, which above is in part rehearsed, consists on three Branches; First, That the King, his Heirs or Successors, shall not at any time hereafter Sue, Impeach, Question, or Implead any Person or Persons, Bodies Politick or Corporate, for, or in any wise concerning any Manors &c. 2dly, Or for, or concerning the Revenues, Issues, or Profits thereof. 3dly, Or make any Title, Claim, Challenge, or Demand &c. This Part is exclusive and negative, and herein six Things are to be observed. 1st. This Clause extends to all Manner of Suits &c. either in Law or in Equity. 2dly, To all Manner of Courts whatsoever. 3dly, It extends not only to all Manner of Suits, but to all Impeachments, Questionings, Impleadings, making of Title, Claims, Challenges, or Demands. 4thly, Under these Words (Right and Title) not only bare Rights and Titles are comprehended, but Real Estates also. 5thly, Not only Suits &c. for or concerning any Manors &c. but for and concerning the Revenues, Issues or Profits &c. And this extends to the Ancient Demesnes of the Crown, which are mentioned to be restrained by an Act 11 H. 4. 6thly, So as all Writs of Scire Facias, or other Process upon any Record; all Informations of Intrusion, or charging any Man as Bailin; all Finding of Offices, either intitling the King, or of Information are restrained, not only within these Words, (Impeach or Question) but also within these Words (Or make any Title, Claim, Challenge or Demand) which are large and beneficial Words, and all other Suits &c. of what Kind or Nature soever. But this Negative Clause must have four Incidents; 1st. The King's Right and Title must accrue unto him above 60 Years past before the 19th Day of February in the 21st Year of King James, which was the Day of the Beginning of this Parliament, the Reason hereof was, That if any Title of Escheat, Forfeiture &c. accrued within 60 Years, then it should be out of this Act. For generally the Time of Limitation to bar the King was 60 Years, but such Right or Title must now be in Effc. 3 Inst. 183, 189. cap. 87.

Unless the King, or some of his Predecessors, or some other under whom he ^{In this} claims, have been answered (by Force of such Right or Title) the Rents, Issues, ^{Branch,} and Profits thereof within 60 Years next before the Beginning of this Par- ^{these Words} liament; — [The 3d. Incide it is,] ^{(By Force} ^{and Virtue} ^{of any such}

Right or Title) were materially added, for otherwise if the King had been answered the Rents, Revenues &c. by Reason or Pretext of Wardship, Primer Seisin, Extent, or the like, it might have made a Doubt, whether such an answering of the Revenues &c. had been within this Act, which Doubt is cleared, that it must be by Force or Virtue of any such Right or Title whereby the King impeaches the State of the Subject. 3 Inst. 189. cap. 87.

Or that the Same have been duly in Charge to the King, or Queen Elizabeth ^{(Part in} within the Space of 60 Years. — [The 4th. Incident is,] ^{Case) in} ^{Judgment of} Law, is the Roll of the Pipe; For altho' a Note before the Auditor, or any other may be a Mean to bring it in Question, and to be put in Charge, yet that is not in Judgment of Law said to be duly in Charge, unless it be in Charge in the Pipe. 3 Inst. 189. cap. 87.

It cannot stand in Super, unless the

Or have stood Insuper of Record within the said Time.

Thing in Question were before duly in Charge. 3 Inst. 189 cap 87.

This is the second Part of the Body of the Act, and as the first Part is Negative and exclusive of the Right and Title of the King, so this Part is Affirmative

And that every Person and Persons, Bodies Politick and Corporate, their Heirs and Successors, and all claiming by, from, or under them, or any of them, for and according to their, and every of their several Estates and Interests, which they have or claim to have in the same respectively, shall hereafter quietly and freely have, hold, and enjoy against his Majesty, his Heirs and Successors, claiming by any Title accrued, or grown 60 Years past, or above, and now in Effie, all and singular Manors, Lands, Tenements, Rents, Tithes and Hereditaments whatsoever, except Liberties and Franchises, which he or they, or his or their, or any of their Ancestors or Predecessors, or those from, by, or under whom they claim, have held or enjoyed.

and establishing the State of the Subject. The Mischief, before this Statute were of two Sorts, viz. either when the King had an Estate vested, or continued in him; or where the King had but a bare Right; For Example, the King's Tenant seised of Lands &c. in Fee is attainted of Felony and dies, the King has a Real Estate in him; but if before the Felony, the King's Tenant were Disseised, and after is attainted and dies, now has the King but a Bare Right in both these Cases, & sic in Similibus the Subject is provided for by this Act, both by the first Part and by this also; For where in this Part it is said, (according to their and every of their several Estates and Interests which they have or claim) If they have an Estate and the King but a bare Right or Title, then are they within these Words, (which they have) And if the King has a Real Estate in him, then are they within these Words, (or claim) so as the Remedy is applied to both the Mischiefs; Again the Words in this Part are further, (have held or enjoyed) that is where the Subject has an Estate, and the King but a bare Right or Title. 3 Inst. 190. cap 87. — Moreover, the Words of this Part are (against him, his Heirs or Successors) so as admit in the Case but before, the King's Tenant being disseised, as is aforesaid before this Attainder of Felony, that that Disseisor had been disseised, or had mortgaged the Land before this Statute, this Act in this Case bars the King of his Right and Title, and to that End works upon the State of the Disseisor or Mortgagee; but yet the first Disseisor or the Mortgagee for the Condition performed or broken may re-enter; For the Words of this Part be (against the King, his Heirs and Successors) so as the Bar is only against them; and every Subject shall take Benefit of this Act, for the King's Right and Title is thereby utterly barred; and there is a Saving hereafter in this Act to all Persons &c. other than the King &c. all such Right &c. as they ought to have had before this Act. 3 Inst. 190. cap 87.

* These Words extend to all Cases where the Real Estate is in the King; hereby is understood the actual Taking of the Rents, Issues, Re-

*Or taken the * Rents, Revenues, Issues or Profits thereof by the space of 60 Years next before the Beginning of this present Session of Parliament, unless his Majesty, or some of his Progenitors or Ancestors, or some other Person or Persons, Bodies Politick or Corporate, by, from, or under whom his Majesty anything has, or lawfully claimeth, in the said Manors, Lands, Tenements, Rents, Tithes or Hereditaments, by Force of any Right or Title, have been answered within 60 Years next before the Beginning of this present Session of Parliament, or that the same have been duly in Charge, or stood Insuper of Record, as aforesaid, within the said Space of 60 Years.*

venues or Profits by one that claims an Interest in the Land; for albeit the King may in Law charge him as Bailiff, yet without Question De Facto, he did take the Rents, Issues, Revenues and Profits, and suffices to answer the Letter and Meaning of this Act. 3 Inst. 190.

This Part secures the Subject against the Subject, viz. against Patentees and Grantees of Concealments, defective Titles or Lands not in Charge, and all claiming under them. A beneficial Law both

And furthermore, that every Person &c. their Heirs and Successors, and all claiming by or under them &c. shall quietly enjoy such Manors, Lands &c. (except Liberties and Franchises) as they now claim and enjoy, (whereof his Majesty, his Progenitors &c. by Force of some Right or Title, have not been answered the Rents &c. thereof, within 60 Years next before the Beginning of this present Session of Parliament) nor the same have been duly in Charge, or stood Insuper of Record as aforesaid, within the Space of 60 Years, against all Persons, their Heirs &c. claiming any Estate or Right &c. in, or to the same, by any Letters Patents, or Grants upon Suggestion of Concealment, or wrongful detaining, or not being in Charge, or defective Titles, of, or for which said Manors &c. or any of them, no Verdict, Judgment, Decree, Judicial Order upon hearing or Sentence now standing in Force, has been had or given in any Action &c. in any of his Majesty's Courts at Westminster, for or in the Name of the King's Majesty, or of the late Queen

Eliz. or for any the said Patentees or Grantees, or for their, or any of for the their Heirs or Assigns within 60 Years next before the Beginning of this Church and present Session of Parliament.

in respect of the Multitude of Letters Patents and Grants of these Natures and Qualities, and many of them of large Extents, and in general Words, and had passed through the Hands of many indigent and needy Persons &c. This Part extends to Liberties and Franchises which the former two Parts did not. 3 Inst. 190. cap. 87.

This Act shall not extend to impeach the King's Right or Title to any Reversion or Remainder, nor to alter the Tenures or Services of Lands; and here also the Right of all others (save of the King) is saved.

Neither shall this Act extend to annul the Custom of 2 d. paid for every Chaldron of Sea-Coals at Newcastle upon Tyne.

All Fee Farm Rents, and other Rents paid by the mere part of 60 Years, are hereby confirmed.

of the King's Fee Farms and Rents out of such Manors and Rents &c. which are established and made sure by this Act; For Example, King E. 6. granted the Manor of D. which came to him by the Statute of Chantries to J. S. and his Heirs, reserving a Fee Farm or any other Rent, which Grant for some Imperfection was insufficient in Law to pass the said Manor, and yet is established and made sure by this Act, and this Proviso makes good the Fee Farm or Rent to the King, if he has been answered the same by the greater Part of 60 Years. 3 Inst. 191. cap. 87.

Provided, that no putting in Charge, standing Insuper, or answering the Rents or Profits of any Lands or Hereditaments, by Force or Colour of any Letters Patents, Grants or Concealments,

cause either they had a Clause before the Habendum, Quæ quidem Maneria nuper fuerunt a nobis Concelata, Subtracta, vel Injuste detenta, or to the like Effect, or else a Proviso after the Habendum, to the like Effect; Letters Patents of Concealment were granted in Queen Mary's Time, and the first, that I find, were granted to Sir George Howard; and in all succeeding Acts of Parliament of Confirmation of Letters Patents, Letters Patents of Concealments are excepted. 3 Inst. 189. cap. 87.

Or defective Titles,

sed by the Warrant of certain Commissioners under the Great Seal for Composition of defective Titles, pretending the same to be for the King's Benefit, and Safety of the Subject, in which Letters Patents no Words of Concealment &c. are mentioned, but yet upon the Matter they were supposed to be concealed &c. from the Crown. 3 Inst. 189. cap. 87.

Or of Lands, Tenements or Hereditaments, out of Charge,

to have a Certificate that they were not in Charge, and then to take a Grant from the King for a very small Composition &c. and these were but Inventions and subtle Devices to deceive the King; to rob him of his Tenures, and to the infinite Vexation and Trouble of the Subject, all which Mistchiefs are now remedied by this Act. 3 Inst. 189. cap. 87.

Or by Force or Colour of any Inquisitions, Presentments upon any Commission, or other Authority to find out Concealments, defective Titles, or Lands, Tenements, or Hereditaments, out of Charge, shall be deemed or taken to be a putting in Charge, standing Insuper, or answering the Rents or Profits to the King or his Predecessors, unless thereupon such Lands, Tenements, or Hereditaments have been upon any Information or Suit, (on the Behalf of the King or his Predecessors) upon any lawful Verdict given, or Demurrer in Law, adjudged, and upon hearing ordered or decreed to the King or his Predecessors, within the said time of 60 Years.

This Act shall not extend to Lands for which Composition is or shall be made before the End of this Parliament.

(I. e) *Ecclesiastical Laws. The Antiquity.*

By the
Grant of W.
the Conque-
ror, the
Bishops ori-
ginally had
an intire Ju-
risdiction to
juge all
Cauſes relat-
ing to Reli-
gion; For
before that
Time the
Biſhop and
the Sheriff
kept their

[I.] **B**EFORE the Time of King William the Conqueror, all Matters, as well Spiritual as Temporal were determined in the Court of the Hundred, where were wont to ſit a Temporal Judge, called Aldermannus, and a Biſhop, the one for Temporal, the other for Divine Right; but this was altered by King William, (and it ſeems by Parliament, for this was by the Aſſent of the Biſhops, Abbots, and all the Princes of the Realm;) For he ordeined, That the Biſhop or Arch-Deacon ſhould not hold Plea of Episcopall Laws, and Que ad Regimen animarum pertinent in the Hundred but by himſelf, and their Right ſhould be done, not according to the Hundred, but according to the Episcopall Laws and Canons. All this appears by the Charter of King William. Irrot. 2 R. 2. Pro Decano & Cap. Eccles. Lincoln. Jan. Angl. 76, 77.

Court together. So that before the Conqueſt there were no ſuch Courts in England as we row call Courts Eccleſiaſtical or Spiritual; For anciently the Biſhops ſat in Judgment together with the ſecular Judges and Sheriffs on the ſame Tribunal, eſpecially about Eaſter and Michaelmas, as appears by Mr. Selden in his Notes on Eadmer, pag 167, as alſo by the Laws of King Athelſton. And long after the Conqueſt, in the Reign of H. 2. 1164, by his Laws made at Clarendon, the Biſhops might intereſt themſelves with the King's ſecular Judges where the Matter in Judgments extended not to the Diminution of Members, or were Capital. Notwithſtanding, at the ſame time the Biſhop's Eccleſiaſtical Courts, as alſo the Arch-deacon's Courts were eſta bliſhed in this Kingdom, and further ratified and confirmed by theſe very Laws of H. 2. made at Clarendon. In the 1 E. 6. it was enacted, That all Proceſs out of the Eccleſiaſtical Courts ſhould from thenceforth be iſſued in the King's Name only, and under the King's Seal of Arms, contrary to the Uſage of former Times. But this ſtatute being repealed by Queen Mary, and not revived by Queen Eliz. the Biſhops and their Chancellors, Commiſſaries, and Officials, have ever ſince exerciſed all manner of Eccleſiaſtical Jurisdiction in their own Names, and under the diſtinct Seals of their ſeveral Offices reſpectively. Alſo by the Statute 25 H. 8. cap. 19. it being enacted, That all former Canons and Conſtitutions not contrary to the Word of God, the King's Prerogative, or the Laws and Statutes of this Realm, ſhould remain in Force till reviewed by 32 Commiſſioners to be appointed by the King, and that Review not being made in that King's time, nor any thing done therein by E. 6. (though he had alſo an Act of Parliament to the ſame Effect) the ſaid ancient Canons and Conſtitutions remained in Force as before they were, whereby all Cauſes Teſtamentary, Matrimonial, Tithes, Incontinency, Notorious Crimes of publick Scandal, wilful Abſence from Divine Service, Irreverence, and other Misdemeanors in or relating to the Church &c. not puniſhable by the Temporal Laws of this Realm, were ſtill reſerved unto the Eccleſiaſtical Courts as a ſtanding Rule whereby they were to proceed and regulate the Exerciſe of their Jurisdiction. Godolph. Rep Introduction, pag. 22, 23, 24.

But though the Biſhop and a Temporal Judge, called Aldermannus were wont to ſit together, yet the one ſat for Matters of Spiritual, and the other of Temporal Cognizance. But that was altered by King W. by Aſſent of the Biſhops, Abbots, and all the chief Perſons of the Realm; For he ordeined, That the Biſhop or Arch-deacon ſhould not hold Plea of the Episcopall Laws, and que ad Regimen Animarum pertinent, in the Hundred but by themſelves, and there adminiſter Juſtice, not according to the Law of the Hundred, but according to the Eccleſiaſtical Laws and Canons, as appears by King William's Charter inrolled 2 R. 2. Pro Decano & Capitulo Lincoln. Godolph. Rep. 96. cap. 11. cites Jan Ang. 26, 27.

(K. e) *Commutation. Penance.*

Prynne's
Cott. Rec.
Abr. 536.
No. 24 —
Redemption
or Commu-
tation of
Penance be-
ing a Li-
berty liable

1. **T**HE Commons pray, That where the Ordinaries put to a ſtain pecuniary all thoſe who are found Guilty of the great Sin of Adultery and Lechery, ſcilicet, ſometimes 40 s. and ſometimes more or leſs, by which the Lieges are greatly impoveriſhed, and ſuch Sins the more ſuſtained and uſed, where, by the Law of God, ſuch Sinners ought to be chaſtiſed by Corporal Penance, to the Effect that ſuch Sin ſhould be rather taken away from among the People; They pray, that it may be ordeined, that no Ordinary ſet

put any one to pecuniary Pain for such Offences, upon Pain of Forfeiture of ten times as much as they shall levy. *Answer.* The King has charged the Lords Spiritual thereof to ordain due Remedy, and if they do not, the King will have it well in Memory, and cause to amend it in time to come. Rot. Parl. 1 H. 5. M. 24.

Church has made many wholesome Orders concerning it. (1.) That there be no Commutation at all, but for very weighty Reasons, and in Cases very particular. (2.) That when Commutation is made, it be with the Privity and Advice of the Bishop, under his Hand and Seal; and not by the Chancellor, Commissary, or Official; or (if in any Case it be done by him) that he give a just Account yearly to the Bishop of all Commutation Monies in that Year, on Pain of one Year's Suspension. (3.) That the Money be applied to pious and charitable Uses. (4.) That if the Crime be publick and notorious, the Satisfaction made to the Church shall be signified to the Congregation where the Offender lives, with publick Professions of his Submission and Repentance. (5.) That the Favour of Commutation be not granted a second time to the same Person for the same Fault. Indeed none of these Regulations are in Force at this Day; But yet they may be useful Rules to go by till somewhat more authentick be framed upon this Head. Gibs. Cod. 1692.

Instead of regulating Commutations, and the Abuses of them, the Commons in Parliament petitioned (1 R. 2. & 1 H. 5.) that there might be no Commutations at all. Gibs. Cod. 1693.

2. Rot. Parl. 45 E. 3. M. 24. Complaint of the Ordinaries, because they do not justice Trespasers by Pain Corporal, but only Pecuniary, and Summe 44 E. 3. M. 41. but Vacat.

3. Rot. Parl. 45 E. 3. M. 24. Complaint of the Ordinaries for giving Acquittances to the Executors before full Account made &c.

4. In Case of Commutation of Penance it must be after Sentence. 3 See 2 Roll. Int. 150. Rep 387. Mich 21

Jac. in the Star Chamber, Dr. Barker and Mr. Auditor Jones Register's Case, where 6 Rules were laid down for Commutation. 1. That Penance ought to be enjoined before the Party shall be admitted to make Commutation. 2dly, That it ought to be in open Court. 3dly, That it ought to be enjoined in the Presence of the Publick Register. 4thly, That the Act in the Register Book ought to be entered. 5thly, That it ought not to be granted to Persons relapsed. 6thly, That the Commutation Money ought to be employed to pious Uses. But Holart Ch. J. That as to Commutation with Persons relapsed, tho' in general it may not be, yet there may be some Circumstances in a particular Case which may make it reasonable. And Ld Maundeville held the first Rule true, That Penance ought to be Precedent; For that there cannot be Commutation for Penance where none is enjoined. 2dly, That Commutation may be out of open Court, and therein the Difference is this, That such Things as are Contentious Jurisdictionis ought to be determined in Foro Publico; but that such as are Voluntarie Jurisdictionis where the Inquiry is Ex Officio, Commutation may be out of Court, even In Foro alieno in another Diocess. 3dly, That it cannot be of Necessity, that there be any publick Register present; For till H 3d's Time there were no Publick Registers, and that it is sufficient if it be in Presence of a Publick Notary. 4thly, The Entry belongs to the Clerk, and not to the Judge, and the Party ought to see it done for his own Advantage. 5thly, As for Persons relapsed, the Text is, That there shall not be Notary Recidivo. 6thly, As for the last that it is a good, certain and true Rule; And he thought clearly, that Chancellors are chargeable to inquire upon the Statute of 43 & 49 Eliz. of Charitable Uses.

5. Publick Penance is a Punishment imposed for a Crime, by standing in some publick Place, and making an Acknowledgment of it; to satisfy the Church for the Scandal given by an evil Example. In the Case of Incest, Adultery &c. the Sinner is usually enjoined to do publick Penance in the Cathedral or Parish Church, or publick Market, Barefooted and Bare-headed, in a white Sheet, and to make an open Confession of his Crime in a prescribed Form of Words &c. For smaller Faults a publick Satisfaction or Penance is to be made in the Court, or before the Minister and Churchwardens, or some of the Parishioners, as in Cases of Defamation &c. Wood's Int. 507.

6. Penance may be changed into a Fine or Sum of Money to be given to Pious Uses, which is called *Commuting*. But the Judge ought not directly or indirectly to take any thing hereof to his own Use, or for the Assesment thereof, or entring the Publick Act. If he doth, it is Extortion. Quare, If he takes only his customary Fees. Wood's Int. 508.

Fol. 21.
See Prohibition (A)

(L. e) *Prohibition. Ecclesiastical Jurisdiction. The Antiquity of their Jurisdiction.*

1. 1 R. 2. cap. 14. The Clergy greatly complain for that the People of Holy Church pursuing in the Spiritual Court for the Tithes, and their other Causes which of Right ought, and of old Times were wont, to pertain to the same Spiritual Court are indicted for this Cause &c.

(M. e) *Administration. The Antiquity of Ecclesiastical Jurisdiction thereof.*

The Books of Common Law observe that the Foundation of this Right which the Church has, was by special Concession from the Secular Power; which is so far from being deny'd, that it is in no other Doctrine than what Lyndwood himself has laid down. — Sed hic posset queri, unde provenit hæc Libertas; videtur namque quoad primum, quod Ecclesia non haberet se intromittere de tali Approbatione Testamentorum, sed potius, pertineret ad Judices Laicos. Dic, quod hæc Libertas, quoad Approbationem hujusmodi, fundatur super consensu Regio, & suorum Procerum, in talibus ab antiquo concessio. — And again, — De consuetudine tamen hæc Approbatio in Anglia pertinet ad Judices Ecclesiasticos, Episcopos videlicet et eorum Officiales. Gils. Cod. 560.

1. **T**HE Granting of Administration anciently and at the Common Law, did not appertain to the Ecclesiastical Courts but to the Temporal Courts.

2. But the Granting of Administration was given to the Ecclesiastical Courts by Parliament. Among the Constitutions of Othobon, in scap. De Bonis Intestatorum. Fol. 52. it is said, that this was heretofore provided so by the Prelates of the Realm with the Approbation of the King and his Barons.

3. And in a provincial Constitution, as appears in Linwood, 190. which was made by John Stratford, Archbishop of Canterbury Anno Dom. 1380. it appears, that it was heretofore ordained Consensu Regio & Magnatum Regni. It appears in Linwood, cap. de Testamentis. Fo. 92. by the Constitution of John Stratford, which was Anno Dom. 1380, that then Probate of Testaments belonged to the Ecclesiastical Court of all Things devised by Testament, except of Lay Fees, but not of them.

Lord Coke says, It is held in 2 R. 2. tit Testament 4. That it is only of late Time that the Church had the Probate of Testaments in this Land, till it was by an Act &c. For the People have Probate of Testaments in all other Places except England; and in several Places within England the Lords of Seignories have Probate of Testaments at this Day in their Temporal Courts. And Fremeile there said, that he is Steward in his Country, and both Free and Bond Tenants prove their Testaments before him in the Court Baron, and so it has been used Time out of Mind. And so Fineux and all the Justices in 11 H. 7. 12. b. agreed, That the Probate of Testaments did not belong to the Spiritual Court, but of late &c. that they have not this by the Law Spiritual. And Linwood, who was Dean of the Arches, and wrote Anno Dom. 1422. in the Reign of H. 6. lib. 3. tit. de Testamentis. f. 124. confesses, that Probate of Testaments belongs to the Ordinaries De Consuetudine Angliæ et non de communi jure, and that in other Realms the Ordinaries have it not: And in another Place he affirms the Power of the Bishop in Probate of Testaments, per Consensum Regni & suorum Procerum ab Antiquo. And Lord Coke says, he has a Book publish'd in Latin Anno Dom. 1573, by the Right Revd. Prelate Matthew Parker, Archbishop of Canterbury, who was very expert in Matter of Antiquity; in which it is affirm'd in these Words, Rex Angliæ olim erat Conciliorum Ecclesiasticorum Præses, vindex temeritatis Romanæ, Propugnator Religionis, nec ullam habeant Episcopi Auctoritatem præter emanant a Rege acceptam referebant, jus Testamenta, probandi non habeant, Administrationis potestatem cuique delegare non poterant. So that originally the Ecclesiastical Judge could not commit Administration to any, who might sue or be sued as Administrator, but it was given to the Ordinary by an Act; that is to say, by the Act of 31 E. 3. cap. 11. And in ancient Time before this Statute, it appears by Record, that when a Man died intestate, and had made no Disposition of his Goods, nor committed his Trust to any; in such Case, the King (who is Parens Patriæ) was wont by his Ministers to seize the Goods of the Intestate, to the Intent that they should be preserved and disposed for the Burial of the Deceased, for Payment of his Debts, for Advancement of his Wife and Children, if he has any, and if none, those of his Blood. And it appears in Rot. Claus. de 7 H. 3. M. 16. Bonis intestatorum &c.

solebant in manus Regis &c. And afterwards this Care and Trust was committed to the Ordinary, for none could be found more apt to have such Care and Charge of his territory Good after the Death of the Intestate than the Ordinary, who all his Life had the Cure and Charge of his immortal Soul, as it is said, Plowd. Com. 282. in *Crisbrook's Case*, and therefore he was to this Purpose constituted In Loco Parentis. 9 Rep. 37. b. &c. Trin. 42 Eliz. in *Hensloe's Case* — But * Windham, J. affirm'd, that the Jurisdiction of Testamentary Causes belong originally to the Spiritual Court, and not to the King; For a Man by our Law cannot make a Gift after he is dead, but the Spiritual Law will enforce the Executor to do it. And where Lord Co. 9. 27. b. in *Hensloe's Case*; and Co. 5. 16. b. d. Jar. Reg. Eccles. holds that they did not originally belong to the Ordinary, and cites a Record that Bona Fictoris capi solebant &c. he thought that this Record proves only, that if one dies Debtor to the King those of the Exchequer will issue Writ of Prerogative to seize all his Goods &c. till he has satisfied the King; and this Matter is now in Use, but the Word *solebant* is not in the Record. But Twissden J. e contra, that Testamentary Causes belong not originally to the Spiritual Court, but to the Temporal Courts and Common Law, and were proved before Lords of Manors. Co. 9. 37. b. as they now are in some Places. And there are several Precedents in our Books, especially in the old Books of Entries, where Actions upon the Case and some Actions for Debt were brought for Legacies in the Hundred Court, but this is now antiquated. But in my Time I know that it was adjudg'd here, that if one by his Testament devises a Legacy to be paid out of his Land (as out of the Profits thereof) that for such Action upon the Case lies in this Court. And Lord Dyer said, that the proper Remedy for it is to sue in Chancery, which proves, that it does not belong to the Spiritual Court; quod fuit concessum. Sid. 46. Mit. 13. Car. 2. B. R. in the Case of *Nicholson v. Shirman* — * S. P. Per Windham, J. 1 Lev. 153. Hill. 16 & 17. Car. 2. B. R. in the Case of *Prix v. Parker*. — Wills are proved by Prescription in some Manors before the Steward, tho' no Lands pass by it as in the Manor of Mansfield, and in Cowley and Caversham Manors in Oxfordshire; and its being proved in the Spiritual Court is but of later Time, and belongs not to it of Common Right, as Linwood owns, nor is it so in other Kingdoms. Went. Off. Ex. 43. — But Noy affirm'd, that the Ordinary might commit Administration at the Common Law before the Statute 21 E. 3. which is but an Affirmance of the Common Law. Arg. Lat. 68. Pash. 1. Car. in *Mayow's Case*. — The Court held, that Administrations originally belong'd to the Bishops, and the Instance of some Lords is not a Proof to the contrary; and denied the Opinion in 9 Rep. *Hensloe's Case*. 1 Salk. 37. Trin. W. & M. B. R. *Manning v. Napp*.

† 2 Inst. 488. cites this Constitution of John Stratford as made at a Synod in London, 1280. but in 9 Rep. 29. in *Hensloe's Case* it is 1380 as here. But in Cart. 131. Trin. 18. Car. 2. C. B. in the Case of *Hughes v. Hughes*, Dr. Watker, a Civilian, who argued in that Case, 184. he admitted that John Stratford was Archbishop of Canterbury, and held a Synod in London, but not in 1280. but was dead 30 Years before. — And it appears in *Chronica W. Thorn*, (among the Decem Scriptores) pag. 2066. that John Stratford, Bishop of Winchester, was made Archbishop in 1355. And Ibid. pag. 2118. it is said, that he died in 1348.

4. By the Law of Scotland, in Time of King David the First, who lived in the Time of H. 1. King of England, *Placitum de Testamento coram Iudice Ecclesiastico tractari debuit & Placitum de Testamentis ad Forum Ecclesiasticum pertinebat*. Skene Regiam Majestatem. lib. 1. cap. 2. lib. 2. cap. 38.

5. Si Testator nullos Executores nominaverit possunt propinqui & eius Consanguinei ad hoc faciendum se ingerere. Skene Regiam Majestatem. lib. 2. cap. 38. versus 4. Ita quod si aliquem heredem vel alium Rerum defuncti Detentorem reperiunt, habebunt Breve Domini Regis direct. Vicecomiti in hac forma, Rex Vicecomiti salutem Praecipimus tui quod iuste & sine dilatione facias stare rationabiliter testamentum M. sicut rationabiliter magis stare poterit & secundum quod ille illud fecit & quod stare debet Testamentum; Si quis autem ejus brevis Autentatem convenerit, aliquid dixerit contra Testamentum, scilicet, quod hoc fuit rite factum, vel quod res petita non sint legata, tunc quidem Placitum illud in Curia Christianitatis inde audiri debet & finaliter terminari; quia placitum de Testamentis coram Iudice Ecclesiastico tractari debet &c.

6. Mirror of Justices. Fol. 27. cap. 2. S. 13. * Whereas he holds Plea against the † Prohibition of the King, and in Prejudice of the Dignity of his Crown & since no Judge Ecclesiastical it does not belong to hold any Plea Secular but of Testament and Barrony in Prejudice of the Power of the King.

* Orig. is
(deque it)
† Orig. is
(Defence)

Fol. 218.

† Orig. is
(Defence)

See Ecclesiastical Court.

(N. e) Ecclesiastical Law. Jurisdiction.

1. Rot. Parl. 17 E. 3. M. 52. Complaint made by the Commons of the Deans and Officials for holding Plea of Things pertaining to the Crown.

2. 6 E. 1. Rot. Patent. Memb. 5. in Dorso. upon great Complaint made by the Sheriff, Bayliffs, and Men of the County of Cornwall, that the Bishop of Exeter and his Ministers trahunt in placita Coram eis in Curiam Christianam de Catallis & Debitis quæ non sunt de Testamento vel Matrimonio & etiam de Laicis Feodis, Follatis, Divisis, Parcis, Rivariis, Piscariis, Sabulonibus, & de Transgressionibus & Distractionibus in eis factis quorum cognitio & Correctio ad Coronam & Dignitatem nostram & non ad Forum Ecclesiasticum pertinent & etiam quosdam eorum per sententias Ercom. compulerunt & adhuc compellere non cessant ad Redemptionis quærimoniarum gravissimas eidem Episcopo et causis prædictis præstandis & ad Obligationes ei faciendas &c. in Regie Dignitatis & Coronæ læsionem & nostri & multorum Ergævationem manifestam quæ ulterius Sustinere nolumus nec debere constitimus &c. and therefore a Commission granted to certain Persons Ad Audiend. & Terminand. those Grievances by Oath of &c.

3. 4 E. 2. lib. Parl. fol. 86. Ad querelam Communitatum Regni Angliæ conquer. de eo quod Prælati Regni loquuntur nimis large in Causis & Contentionibus pertinentibus ad Coronam & Dignitatem Regiam &c. Ita Responsum, si quis senserit se gravatum querat Remedium sibi in Cancellaria.

4. Hil. 6 E. 1. B. Rot. 13. Inhibitum fuit quod non prosequatur ulterius in Curia Christianitatis de Debitis & Catallis &c.

For laying violent Hands on a Spiritual Person, Action lies in the Spiritual

5. Statutum de Circumspecte agatis 13 E. 1. In Magna Charta, fol. 89. De violenta Manuum injectione in Clericum & in Causa Defamationis concessum fuit alias quod Placitum inde teneatur in Curia Christianitatis cum non petatur Pecunia sed agatur ad Correctionem peccati. Et similiter pro Fidei Læsione.

Court, but he shall not sue there for Damages. Per Coke, Ch. J. Roll. R. 255.

6. Prohibitio formata de Statuto Articuli Cleri in Magna Charta. 2 part. fol. 70. b. Cum Cogniciones Placitorum de Causis Pecuniariis & de aliis Catallis & Debitis quæ non de Testamento vel Matrimonio ad Coronam & Dignitatem nostram pertineant de Coniudice ejusdem Regni approbata & hactenus observata &c.

* Proof of Wills and the Validity of them belongs to the Ecclesiastical Court, and if

7. It seems by the Statute of 2 H. 5. cap. 3. Quod vide 2 H. 5. Rot. Parl. M. 5. accordingly that Causes concerning * Testament and † Matrimony appertain to the Consuance of the Temporal Court; But Quare the Bill upon the File, if it be not mistaken in the Print.

they adjudge a Person capable of making a Will, B. R. will not intermeddle; for it is within their Jurisdiction to adjudge when a Person is of Age to make a Will. Per Cur. 2 Mod. 315. Trin. 30 Car. 2. B. R. Smallwood v. Brickhouse — The Ecclesiastical Court is the proper Judge whether a Will, or no Will, and howsoever they determine 'tis conclusive at Law. Comb. 454. Mich. 9 W. 3. B. R. Gray v. Tench.

† If any marry without Proclamation of Banns or Licence, they are citable for this to the Ecclesiastical Court, and no Prohibition lies Resolved. Jo. 259. Matingley v. Martin. — Wife or not Wife is triable at Common Law, but whether lawfully married or not is triable in the Spiritual Court. Sti. 10. Pasch. 13 Car. Bettsworth v. Bettsworth. — Jenkins 289. pl. 26. says, the Spiritual Court has nothing to do with the Legality of the Marriage, but where the Temporal Court commands them to inquire and certify it, and this in Real Actions only.

8. Rot. Parl. 25 E. 3. 2 Part. B. 64. upon Petition of the Clergy, the King answered, If Title of Voidance be taken in Plea before Justices, whereof the Conscience appertains to the Court Christian, let the Party have his Challenge, and the Justices do him Right.

9. These Pleas here ensuing are * meer Spiritual, whereof the Ecclesiastical Court may hold Plea, scilicet, De Correctionibus quas Prælati faciunt, Pro Mortali Peccato, scilicet, Pro † Fornicatione, Adulterio & ‡ Hujusmodi, || pro quibus aliquando infligitur Pœna ¶ Corporalis, aliquando Pecuniaria, maxime si convictus fuerit de Hujusmodi Liber Homo. Item si Prælatus puniat Pro Cœmeterio non clauso, ** Ecclesia discooperta, vel non decenter ornata, in quibus casibus alia pœna non potest infligi quam Pecuniaria. Item si Rector petat versus Parochianos †† Oblationes & Decimas debitas, vel collectas; vel si Rector agat contra Rectorem de Decimis Majoribus, vel Minoribus, dummodo non petatur quarta Pars valoris Ecclesiæ. Item si Rector petat Mortuarium in partibus ubi Mortuarium dari consuevit. Item si Prælatus alicujus Ecclesiæ, vel Advocatus petat a Rectore ‡‡ Pensionem sibi debitam, Omnes Hujusmodi Petitiones sunt faciendæ in foro Ecclesiastico. |||| Statutum de Circumspecte agatis E. 1. in Magna Charta, fol. 89. Rot. Parl. 25 E. 3. 2 Part. B. 62. It was prayed by the Clergy that this Statute might be confirmed, yet it is not done.

* Those Things are
|| Pol 219.
called meerly Spiritual, because they have no Temporal Mixture, and are Corrections
Pro Salute Anima. Heresy, Schisms, Holy Orders and the like, are meer Spiritual Things. But the Power

of granting Administration and Probate of Testaments, do not de Jure Communi belong to the Court Christian. 2 Inst. 488.

† The Conscience of all Fornications, Adulteries, and *Suspicious living in Adultery*, belongs to the Ecclesiastical Court Jo. 259. Matingley v. Martin — In ancient Time the King's Courts, and especially the *Leet*, had Power to inquire of and punish Fornication and Adultery, by the Name *Letherwite* [for *Legerwite*, for which see Somner's Gloss. Verbo Letherwite] and it appears often in Doom'day-Book, that the King had the Fines ass'd for tho's Offences, and that they were ass'd in the King's Courts, and could not be inflicted in Court Christian. 2 Inst. 488.

‡ This extends to *Sollicitation of Chastity* of any Woman, and to *Incest*, the first whereof is a less, and the last a greater Offence than those mentioned of Fornication and Adultery. 2 Inst. 488. — Cited per Vaughan Ch. J. Vaugh 212. in Case of Harrison v. Burwel

¶ Pecuniary Punishment must be intended by Way of Commutation of Penance. 2 Inst. 489.

** By the Words (Church Uncover'd) is intended not only of the Body of the Church, which is Parochial, but also of any *Publick Chapel annex'd* to it; but it extends not to the *Private Chapel* of any, tho' fix'd to the Church, for that must be repaired by him that hath the proper Use of it; but as to the first the Parishioners ought to do it Per Consuetudinem Notoriam & Approbatam, and the Conscience therefore is allowed to them by this Act, but the *Chancel* is to be repaired by the Parson &c. 2 Inst. 489.

†† Oblationes dicuntur quæcunque a piis fidelibusque Christianis Offeruntur Deo & Ecclesiæ, five Res solidæ; five Mobiles. 2 Inst. 489.

‡‡ In Case of a Pension, & pro Rationabili parte Bonorum, both Temporal and Ecclesiastical Courts have Jurisdiction. Per Twilden, Rainsford and Wild. 2 Lev 128. Hill, 26 & 27 Car. 2. B R. Trafford v. Trafford.

|||| This Statute of Circumspecte Agatis was made in 13 E. 1. and is called by that Name, because it begins thus, viz. *The King to his Judges sendeth Greeting Use yourselves circumspectly in all Matters concerning the* * Bishop of Norwich and his Clergy, not punishing them if they hold Plea in † Court Christian of such Things as be meer Spiritual. — * The Bishop of Norwich is put here only for an Example, but it extends to all Bishops within this Realm. 2 Inst. 487. — Pl C 36. b. in Platt's Case. —

† It is called Court Christian, because as in the Secular Courts the King's Laws determine Causes, so in Ecclesiastical Courts the Laws of Christ should rule and direct; and therefore the Judges in those Courts are Divines, as Archbishops, Bishops, Archdeacons &c. And it may be found among the Laws published before the Conquest by King Edgar thus, viz. Celeberrimus autem ex omni Satrapia conventus bis quotannis agitor, cui quidem illius Dioecesis Episcopus & Aldermannus interfunt, quorum alter Jura Divina, alter Humana populum edoceto. 2 Inst. 488

Till the Bishop's Jurisdiction was increased by Act of Parliament, he could hold Plea only in Matters Testamentary and Matrimonial, but by the Statute De Circumspecte agatis, and of Articuli Cleri, he may now hold Plea in many other Cases. 2 Mod. 118. Mich. 28 Car. 2. C B. in Case of Waterfield v. the Bishop of Chichester. — 2 Inst. 487. 537.

(O. e) Ecclesiastical Law. *Sentence.*

S. P. Per
Archer J.
2 Vent. 43.
Pasch. 22
Car. 2. in
Case of Grove v. Dr. Elliot.

1. **I**F a Sentence be given by the Ordinary or other Ecclesiastical Judge, it is to be presumed by the Judges of the Common Law, that it is according to the Ecclesiastical Law, and so they ought to allow it. Co. 5 *Cawdry* 7. adjudged.

Jo. 393 S. C.
And says
that the Ch.
J. delivered
the Opinion
of the Court,
that the Ec-
clesiastical
Commission-
ers might
well, for
good Cause,
deprive an
Ecclesiastical
Person of his
Benefice, as
well as the
Bishop or
Ordinary;
and when
the Jury
finds that he
was deprived,
tho' the
Special
Cause does
not appear
either in
the Verdict
or Sentence, yet it is good enough.

2. If the High Commission deprives a Man of his Benefice by Force of their Commission, and it is found by Special Verdict that they deprived him Virtute Liter. Paten. they being authorized Secundum formam Statut. Virtute Commissionis, for divers Contempts to the Ordinary; tho' the particular Cause is not found, yet it is good, and the Court ought to presume the Sentence to be well given, as well as if it had been given by the Ordinary; because the King might before the Statute of 1 El. make Commissioners by his Letters Patents to proceed according to the Ecclesiastical Law; and here it appears that this Proceeding was against a Spiritual Person, and by Ecclesiastical Censure, scil. Deprivation, and not against a Man according to the Statute of 1 El. and therefore the Court ought to give Credit to their Sentence, without shewing the Cause in particular. Trin. 11 Car. B. R. between *Allen and Nash*, adjudged upon a Special Verdict. This concerned one *Huntley*. Intratur B. 8. Car. Rot. 508. and this agrees with *Caudrey's Case*. Co. 5. 7. and the Court vouch'd the old Book of Entries, Tit. Abbe 1. where it is pleaded to be made by Commission generally. But Nota, that the Court seemed that if such Sentence had been grounded merely upon the Statute of 1 El. against a Layman, that then the Cause of the Sentence ought to appear to the Court, by which it might appear to the Court, that the Matter for which the Sentence was given was within the Jurisdiction of the High Commission.

(P. e) *Of what Effect* it shall be in our Law.

Fol. 220.

Cro. J. 463.
S. C. —
Roll. R.
191 & 227.
Pasch. and
Trin. 13
Jac S. C. —
2 Roll. R. 6.
Hill. 15 Jac.
S. C. —
* The In-
stitution and
Induction
stands good,
tho' a Ca-
veat was entered,

1. **I**F the Clerk of J. S. be admitted and instituted, and after the Clerk of J. D. is Admitted, Instituted and Inducted, which is void, because the Church was full before, and so this a Super Institution, and after the Institution of the Clerk of J. S. is sentenced to be Irrita & Nulla, (because he was instituted contrary to a *Caveat entered, admitting this to be a good Cause) yet it shall not so relate to make the Institution and Induction of the Clerk of J. D. good ab Initio, which was void before. Hil. 15 Jac. B. R. between *Hitching and Glover* adjudged; for otherwise by such Means a Purchaser may be utterly defeated of his Temporal Inheritance, because this Sentence may be after 6 Months; for then he is without Remedy.

and the Ecclesiastical Court cannot meddle with it. Litt. R. 165. *Stevens v. Crisp*.

2. If a Layman be admitted, instituted and inducted to a Benefice, and after 6 Months he is deprived, because he is a Layman, and a Sentence of Nullity of his Admission, Institution and Induction, yet it shall not so relate to make a Title of Lapse to the Ordinary; for otherwise

otherwise by such Means the temporal Inheritance may be taken away. D. 3 El. 294. adjudged.

(Q. e) Clergy: Privileges.

1. Rot. Parl. 15 E. 3. N. 19. **T**HE Clergy prayed that they ought not to be taken nor imprisoned without Cause or Process of Law by the Ministers of the King by his Commandment, against the Law and Usages of the Land: To which the King answered, that his Intention is not to do contrary to the Law, but if any is taken by Command of the King, it is done for just Cause by the Ordinance made in the Parliament of Northampton &c. Such Petition by them made 15 E. 3. N. 21. against Imprisonments made of them by the Justices.

Prynne's
Cott Rec.
Abr. 32.
N^o. 19.

2. Rot. Parl. 15 E. 3. N. 22. 30. The Clergy complain, that when it is returned that a Clerk has no Lay-fee in his Baylwick, immediately a Capias is awarded, where they ought to send a Writ to the Bishop his Ordinary, to cause him to come; and when any Clerks are condemned before them for any Sum for any Cause, the Justices command to levy the said Sum, without sending to the Bishop his Ordinary, by which Commandment the Lay Ministers enter the Fee of Holy Church, and the Goods and Chattels &c. To which the King answered, The Process aforesaid is allowable by the Law of the Land, and has been Time whereof Memory &c. And it is not the Intention of the King, that any Layman enter the Fee of Holy Church against the Privileges and Franchises thereof.

Prynne's
Cott. Rec.
Abr. 32 N^o.
22 & 33.
N^o. 30. —
If a *Stire facias* be brought up-
on a Re-
cognizance,
or upon a
Judgment in
a Writ of
Annulity,
and the *Sheriff returns*

that the Defendant is *Clericus Beneficiatus nullum habens Laicum Feodum* &c. The Plaintiff shall have a Writ to the Bishop of the same Diocese, to warn the Defendant; and if he appears not, or shews no Matter wherefore Execution should not be granted, then a Writ shall be awarded to the Bishop to levy Execution de Bonis Ecclesiasticis. Gibf. Cod. 17.

In an Action of Account &c. the Body of a Clergyman shall not be arrested by Capias, but the Sheriff can only return *Quod Clericus est Beneficiatus* &c. Gibf. Cod. 15. — Nor upon Statute Staple or Statute Merchant; for which Purpose there is not only the Clause in the Writ, *Si lienis sit*, Register, fol. 146. 147. but a Special Writ, forbidding the Sheriff to arrest him; or if he be taken by such Process, a Writ is provided for his Discharge. Gibf. Cod. 15

3. Rot. Parl. 45 E. 3. N. 15. Because in this present Parliament it was shewn to the King, by all the Lords and Commons of England, that the Government of the Realm has long been made by People of Holy Church, which are not justifiable in all Cases, by which great Michiefs and Damages have happened in Time past, and more might happen in Time to come, in Dishonour of the Crown, and great Prejudice of the said Realm, by diverse Causes which one might declare, they pray that Lay-people and no other be chosen Chancellor, Treasurer, Clerk of the Privy Seal, Barons of the Exchequer, Chamberlains of the Exchequer, Comptroller, and all other Great Officers and Governors of the Realm. Answer, The King will ordain upon this Point as to him shall seem best by the Advice of his good Council.

Fol 221.
Prynne's
Cott Rec.
Abr 132.
No. 15.

4. Besides the many Confirmations of the Great Charter in Parliament, (which included a Confirmation of the Rights and Liberties of the Church and Clergy) and besides other general Confirmations of the Rights of the Clergy, in Conjunction with those of the Laity, there have been divers Acts and Clauses, especially in Favour of the Clergy. Accordingly divers of our Kings before the Conquest (particularly Edward the Elder, Edgar, Canutus, and Edward the Confessor) begin their Laws with special Provisions for the Liberties of the Clergy, of which therefore the Usage since is only a Continuance. And 'tis observable, that

that many of the Confirmations were made at the special Request of the Commons in Parliament, whose Petitions frequently began with such a general Clause, in Favour of the Church and Clergy. Gibl. Cod. 5. and see Ibid. to pag. 22.

* In some Acts of Parliament we find the Bishop to be called Ordinary, and so taken at

(Q. e. 2) * *Ordinary, and Power of the Ordinary.*

1. **T**HE Ordinary himself, without any Canon or Custom, cannot command any Layman to observe any new Ceremony in the Church.

the Common Law, as having ordinary Jurisdiction in Causes Ecclesiastical, albeit in the Civil Law, whence that Word (Ordinarius) is taken, it signifies any Judge authorized to take Cognizance of Causes Proprio suo Jure, as he is a Magistrate, and not by Way of Deputation or Delegation. The Word (Ordinary) doth chiefly take Place in a Bishop and other Superiors, who alone are universal in their Jurisdictions; yet under this Word are compriz'd also other Ordinaries, viz. Such as to whom ordinary Jurisdiction doth of Right belong, whether by Privilege or by Custom. Godolp. Rep. 23. cap. 3.]

2. As if the Ordinary commands, that no Feme after she has had a Child, shall be Churched, if, when she comes within the Church-door, she does not kneel down, and make her Orisons towards the East, and also come in a Veil, this Command is not lawful, because there is not any Custom since the Reformation, nor any Canon for it; and also the Manner of Churching is ordained by the Book of Common Prayer, which is confirmed by the Statute of 1 El. and the Ordinary of himself has not any such Power to impose such new Ceremonies upon the Laity. 19. 20 Ja. B. R. in one *Shipdam's Case*, the Wife of an Alderman of Norwich, who was excommunicated by the Chancellor there Ex Officio; resolved by Lee and Chamberlain, contra Doughton, and Day given why Prohibition should not be granted. But it was stay'd, because it was certified by diverse Bishops to be the common Custom of the Church of England.

3. It was agreed that the Ordinary in his Visitation, shall make the Parrishioners sustain their Bells, Ornaments &c. Br. Deposition, pl. 2. cites 11 H. 4. 12.

(R. e) * *Deposition. And what shall be Cause to depose.*

Fol. 222.

* Deprivation is an Ecclesiastical Censure, by which a

1. **I**F an Abbot aliens his Land which he has in Right of the House, he shall be **†** deposed as a Dilapidator Domus. 20 D. 6. 46. || 9 E. 4. 34. adjudged accordingly 29 E. 3. 16.

Clergyman is deprived of his Benefice. *Degradation* is an Ecclesiastical Censure, whereby a Clergyman is deprived of his Orders. It is otherwise called Deposition. A Sentence may not only be given for this Purpose, but the Clerk may be solemnly stripp'd of his Clerical Habit. Wood's Inst.

† S. C. cited 9 Rep. 98. b. Trin. 13 Jac. in *Bagg's Case*.—S. C. cited 11 Rep. 72. b. Pasch. 13 Jac. in *Magdalen College's Case*, cites 2 H. 4. 3. b. and 11 H. 6. 35 E. 1.—† Br. Deposition &c. pl. 4. cites S. C.

|| *Dilapidation*, by the Opinion of Lord Coke 3 Inst. 204. is a good Cause of Deprivation; but some think the Authorities he cites in the Margin do not prove it, viz. 29 E. 3. 16. Where it is true there is not one Word to that Purpose. And 3 H. 4. 3. is only the Opinion of Serjeant Tyrwhit, where Thirning Ch. J. is of Opinion, that if a Bishop, Archdeacon &c. committed Waste in cutting Wood which they had in Right of the Church, they were not punishable at Common Law; and then demands of the Bar how the Party could be punished in the principal Case? Where to Tyrwhit answers, He shall be depos'd as a Dilapidator of his House; and Thirning replies, Let that be as it will, (i. e. by Common Law) yet by the Law of the Land he is not punishable. Notwithstanding which I think clearly, that

at

at Common Law an Action of Waste lay for Dilapidations in Ecclesiastical Houses and Buildings; and that therein the Place wasted was recoverable, which was Tantamount to a Deprivation. Watf. Clerg. Law 54. 55.

And in the 9 E. 4. 34. It is held per Moile J. that if a *Son gives an Abbot &c. 10l. to pray for the Soul of his Father, and he spends the Money*, he shall not be deprived, because he received the Gift in Jure Proprio (or in Jure Personæ) but if he *alien'd &c. any of the Abbey Lands*, he might be deprived; for those he had in Jure Domus. And it seems to me there is the like Reason for a Deprivation, where Waste is done in Houses or Lands held in Jure Ecclesiæ. Watf. Clerg. Law 55.

Tho' in Equity Deprivation may well belong to Dilapidators, yet that it hath ever been inflicted, appears not by any Thing that is alleged either out of the Books of Common or Canon Law, which speak only of *Alienations*. Gibf. Cod. 1116.

2. Before the Statute 18 El. cap. 7. if an Incumbent had been convicted by Verdict of Homicide, and could not purge himself of it, this had been Cause of Deprivation. Trin. 15 Ja. B. R. between Serle and Williams, Per Curiam, for he was, Criminosus. Hob. 288 to 294 S. C. adjudged — Cro. J. 430. S. C. by Name of Searle's Case.

3. But otherwise it had been if he had purged himself thereof, as was agreed in the same Case.

4. But now tho' the Purgation be taken away by 18 El. cap. 7. yet the Crime remains, and the Conviction by Verdict of Homicide shall bind him, and so he may be deprived for it. Tr. 15 Ja. B. R. between Serle and Williams. Resolved per totam Curiam, and Prohibition denied. Contra, Mich. 27, 28 El. B. Rotulo. 2574. between Nichols and Chase. Prohibition denied in such Case.

5. If a Parson speaks against the Book of Common Prayer established by the Statute of 1 El. This is good Cause of Deprivation by the Ecclesiastical Law, without any Aid of the said Statute; for he who speaks against the Peace and Quiet of the Church is not worthy to be a Governour of the Church. Co. 5. Cawdry's Case 5. b. adjudg'd. And same Case, 37 El. B. R. Cawdry and Alton, tho' it was objected that it was but Malum Prohibitum. And this Power of Deprivation is not taken away by the said Act from the Ordinary for the first Offence being in the Affirmative. And also there is an express Proviso which excepts it. Co. 5. Cawdry 5. Adjudged.

6. By the Common Law there are *two Sorts of Degrading*; on Summary, by Word or Sentence only; and the other Solemn, by divesting the Party degraded of those Ornaments and Rights which are the Ensigns of his Order or Degree. Gibs. Cod. 1104.

7. The King without Parliament may make Orders and Constitutions for the Government of the Clergy, and may deprive them if they obey not. S. P. Mo. 755. pl. 1043. 2 Cro. J. 37. at an Assembly of all the Judges, and of the Archbishop of Canterbury, Bishop of London, and divers of the Nobility. Jac. in the Star-Chamber.

8. * *Herefy, Schism, Irreligion, Perjury, and Excommunication* are good Causes to deprive a Clerk; so of *Homicide*, if he be attainted and not pardoned; otherwise, if pardoned; for Pardon restores him to the Benefit of Law. Jenk. 259. p. 55. cites Hob. Searle's Case. * Dal. 51. pl. 19. Per Bendloes.

9. It was resolved, that if Bishop, Archdeacon, Parson &c. *abates all the Trees*, this is good Cause of Deprivation. 11 Rep. 98. b. Trin. 13. Jac. B. R. in Bragg's Case; and cites 2 H. 4. 3. b. accordingly.

10. Where a Statute makes it a Part of a Bishop's Office to tender Oaths on Ordination of any Person, if the Bishop *disobeys* it is good Cause of Deprivation; and then the Metropolitan may proceed against him for doing contrary to the Duty of his Office, but not to punish him as for a Temporal Offence. 12 Mod. 239, 240. Bishop of St. David's v. Lucy.

11. *Misapplying Revenue* is Cause of Deprivation. 12 Mod. 240. Mich. 10 W. 3. Bishop of St. David's v. Lucy.

Fol. 223.

* The Power and Jurisdiction of this Office in the Church is very ancient, and was in Use before

the Time of E. 1. This Ecclesiastical Office is in Being immediately, upon the Vacancy of an Archbishopal See, as when a Bishoprick happens to be vacant. Godolp Rep. in the Introduction 9.

† Spiritualties are all Manner of Jurisdications of Courts; As to grant Administrations, to prove Wills, to grant Licences to marry &c. Sav. 52. Pasch. 25 Eliz. Anon.

(S. e.) * *Guardian of the † Spiritualties.* The Guardian of the Spiritualties. *Who is of Common Right.*

1. **O**F Common Right the Dean and Chapter is Guardian of the Spiritualties of the Metropolitan in Time of Vacacion.

Of Common Right by the Common Law, the Dean and Chapter, Sede vacante of the Bishoprick, is Guardian of

2. Of inferior Bishopricks in Time of Vacacion the Dean and Chapter of the See of Common Right is Guardian of the Spiritualties, and not the Metropolitan. Contra, 31 H. 6. 10. Admitted, Dub. 17 C. 3. 23. b. And there it is said by Stouf, That in Time of R. 1. and always before, the Metropolitan was Guardian till the Time of H. 3. and then by Default Composition was taken for it.

the Spiritualties, as appears T. P. 17 E. 3. 23. but now the Archbishops have used to have this by way of Composition, as Great Lords will inroach all into their own Hands. Per Coke, Ch. Just. But by Doderidge every Archbishop is Guardian of the Spiritualties of all the Bishops within his Province, but sede Vacante of his own Diocese the Dean and Chapter thereof is Guardian of the Spiritualties. Coke said, that this commenced by way of Composition, but that originally it was not so, but the Dean and Chapter was Guardian. But Doderidge said, It does not appear so by our Books, no Mention being made of any such Composition, but that the Guardian of the Spiritualties is to be according to the Difference between a Province and a Diocese. 3 Bullst. 176, 177. Pasch. 14 Jac. in the Case of Grange v. Denny.

In a Prohibition the Archbishop pleaded a Prescription,

3. 5 C. 2. Quare Impedit. 165. admitted, that during the Vacancy of the Bishoprick of Durham the Archbishop of York is Guardian of the Spiritualties.

That he and his Predecessors have Time out of Mind been Guardian to the Spiritualties of the Bishoprick of Durham, sede Vacante; and Issue was joined thereupon, and tried at the Bar this Term. Hale said, De jure Communi, the Dean and Chapter were Guardians of the Spiritualties during the Vacancy as to Matters of Jurisdiction; but for Ordination they are to call in the Aid of a Neighbouring Bishop, and so is Linwood. But the Usage here in England is, that the Archbishop is Guardian of the Spiritualties in the Suffragan Diocese, and therefore it was proper here to join the Issue upon the Usage. There was much Evidence given, That anciently during the Vacancy of Durham the Archbishop had exercised Jurisdiction, both Sententious and other, as Guardian of the Spiritualties; But since H. 8th's Time it had been for the most Part administered by the Dean and Chapter. And the Verdict was here for the Dean and Chapter. 1 Vent. 225. Mich. 24 Car. 2. B. R. The Dean and Chapter of Durham v. the Lord Archbishop of York.

4. 23 C. 1. Rot. Claus. Memb. 4. Prior de Ecclesia Christi Cantuar. Guardian of the Spiritualties in Time of Vacacion of the Archbishoprick.

5. Of the Archbishoprick of Canterbury the Dean and Chapter is Guardian of the Spiritualties in Time of Vacacion.

Where the Archbishoprick of York is void, the Metropolitan shall have the Spiritualties, and the King the Temporalities

6. Of the Archbishoprick of York the Dean and Chapter is Guardian of the Spiritualties in Time of Vacacion, and not the Archbishop of Canterbury, because it is a distinct Province, and not subordinate to the Archbishop of Canterbury. Contra, 31 H. 6. 10. Admitted; for there a Parson of the Province of York had Aid of the Metropolitan, Guardian of the Spiritualties of the Archbishop of York in Time of Vacancy of the Archbishoprick.

as of other Bishopricks, and if Aid be to be had by a Parson of the Archbishop of York at that time, he shall have it of the Metropolitan; And so see that Canterbury is a more High See than York, and it seems that at that Time he may commit the Administration. Br. Ordinary, pl. 22. cites 31 H. 6. 10.

7. The

7. The Church, when *Disdiocesan'd* by Death, Translation, or other-
wife, or Quasi Viduata, whilst the Bishop is employed about Transmarine
Negotiations in the Service of the King or Kingdom, the Law takes
Care to provide it a Guardian Quoad Jurisdictionem Spiritualem, du-
ring such Vacancy of the See, or remote Absence of the Bishop, to whom
Presentations may be made, and by whom Institutions, Admissions &c.
may be given; and this is that Ecclesiastical Officer, whether he be the
Archbishop, or his Vicar General, or Deans and Chapters, in whomsoever
the Office resides, him we commonly call the Guardian of the Spiritual-
ties. Godolph. Rep. in the Introduction, pag. 9.

Latch. 237.
S. C.

(T. e) Guardian of the Spiritualties. *What Thing
he may do.*

See Aid of a
Common
Person (Y)
pl. 3. 4. 5.—
(Z) pl. 1.

1. **T**HE Guardian of the Spiritualties may Admit and Institute. S. P. Arg.
17 C. 3. 23. Lat. 35.
237 in

Cafe of Evans v. Afcough.

2. 2 C. 1. Rot. Pat. Memb. 5. The King presented to the Guar-
dian of the Spiritualties of the Archbishoprick of Dublin in Ireland,
Sede vacante, for a Church in Ireland.

3. The Guardian of the Spiritualties shall try Bastardy. 41 Aff. Trial (U.)
29. adjudged. pl. 8. and
(Z) pl. 2.

4. 22 C. 1. Rot. Clauso Memb. 11. Dorso. Letters directed to
all the Bishops to make Orizons for the Journey of the King into
France, and in the Vacancy to the Guardian of the Spiritualties.

5. 23 C. 1. Rot. Claus. Memb. 4. Prior Ecclesiæ Christi Can-
tuar. Guardian of the Spiritualties, in Vacancy of the same Arch-
bishoprick, had a Felon delivered to him.

6. Debt lies against the Guardian of the Spiritualties, as Ordinary in
the Time of Vacation. Br. Ordinary, pl. 24. cites 17 E. 2. and Fitzh.
Brief 822.

7. The Guardian of the Spiritualties shall try the Issue of *Able or Not
Able* in Quare Impetit between the Plaintiff and the Bishop, where the
Archbishop is dead and the See void, and the Bishop refused the Clerk.
40 E. 5. 25. b. pl. 32. Daubeney v. the Bishop of R.

8. Guardian of the Spiritualties cannot confirm a Lease. Per Noy Latch. 237.
Arg. Palm. 461. Trin. 3 Car. B. R. in Cafe of Evans v. Afcough, cites S. C.
7 H. 4. 97.

9. 25 H. 8. cap. 21. S. 16. Enacts that if the Archbishoprick of Canter-
bury be void, then such Manner of Licences, Dispensations, Faculties, In-
struments, Rescripts, and other Writings, which may be granted by Virtue
and Authority of this Act, shall (during the Vacation of the same See) be had,
done and granted under the Name and Seal of the Guardian of the Spi-
ritualties of the said Archbishop for the Time being, and shall be of like Force
and Effect as if they had been granted under the Name and Seal of the Arch-
bishop.

The Guar-
dians of the
Spiritualties
have all
Manner of
Jurisdiction
of the
Courts, as
the Power of
granting Li-
cences and

Dispensations, Probate of Wills, Administrations &c. during such Vacancy, and of Admitting and Institut-
ing Clerks presented to them; but they cannot (as such) Consecrate or Ordain, or Present to vacant Bene-
fices. Wood's Inst. 27.—S. P. Godolph. Rep. in the Introduction 9. 10.—S. P. Godolph. Rep. 39.
40. cap. 4. S. 1. 2. 3.

S. 17. And if he shall refuse to grant such Licences &c. where by Law they
ought to be granted, in every such Case the Lord Chancellor of England, or
Lord Keeper of the Great Seal, upon Petition and Complaint thereof to him
made, may issue his Majesty's Writ, directed to such Guardian of the Spi-
ritualties, requiring him by Virtue of the said Writ, under a certain Pe-
nalty therein limited by the said Lord Chancellor or Lord Keeper, to grant the
same in due Form of Law; otherwise (and no just and reasonable Cause
shewn

shewn for such Refusal) the said Penalty may be incurr'd to his Majesty, and a Commission under the Great Seal, issued or two such Prelates or Spiritual Persons as shall be nominated by his Majesty, empowering them by Virtue of the said Act to grant such Licences &c. as were so refused to be granted by the Guardian &c. as aforesaid.

10. The King presented to a Prebend then void, the Temporalities being in his Hands *sede vacante*, and before Institution the King repeals his Presentation; Notwithstanding which the Dean and Chapter being Guardians of the Spiritualities *sede vacante*, institute and instal the Presentee. Afterwards the King reciting that the Presentee was in Canonice institutus ex sua Præsentatione, ratified and confirmed him. He died Incumbent; in the mean Time a Bishop is created. The King shall have the Presentation again; for he was not in Ex Præsentatione Regis, and consequently the Confirmation void; and Judgment was given (ut dicitur) for the King. But the Reporter says, Quære if it be necessary to allege that the Repeal was shewn to the Guardians of the Spiritualities before the Institution &c. so as they might have Notice thereof, as of a new Commission &c. D. 292. pl. 70. Trin. 12 Eliz. Anon.

11. In a Quare Impedit the Plaintiff recovered, and had Writ to admit his Clerk directed to the Dean and Chapter, Guardians of the Spiritualities, the See of the Bishoprick being then vacant, which is not returnable; and before Execution of the Writ a Bishop is created. It was doubted whether the Authority to execute the Writ be ceas'd in the Dean and Chapter; and it seems that upon a Suggestion made to the Court of this Matter, *Eo quod nihil actum fuit in Breve prædicto*, another Writ may be awarded to the Bishop, and may be returnable if it please the Party &c. D. 350. pl. 19. Pasch. 18 Eliz. Anon.

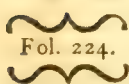
12. In Case of Deprivation for not reading the Articles of Religion, as required by Statute, the Notice to the Patron, in Case of the See's being vacant, ought to be given by the Guardian of the Spiritualities, to make a Lapse accrue. D. 379. b. pl. 54. Pasch. 22 Eliz. Anon.

13. It was a great Question upon a Demurrer in Law, If a Lapse devolves to the Ordinary, and within those 6 Months, the Ordinary is translated to another Bishoprick, If the King, or his Metropolitan, shall present to that Lapse, in default that the Patron does not present. Noy Attorney said, That the Warden of the Spiritualities shall present, who-soever he be. Noy 69. Anon. cites Dyer 78. pl. 103.

14. When the Bishop is confirmed, then the Power of the Guardian of the Spiritualities ceases, and he may consecrate Elects, confer Orders &c. Lat. 246. in Case of Evans v. Ascough.

It ceases
after he is
chosen by
the Conge
d' Eslire. 8

Rep. 69. in Trollop's Case. — The Books of Common Law differ much concerning the Time when the Power of the Guardian of the Spiritualities ceases, and that of the Bishop commences. Some say, upon the Election of the Bishop, others not till Confirmation. And again others, as to all Ministerial Acts, upon Election; and as to Judicial, upon Confirmation. But as the Matter is understood and practis'd at this Day, the Power of the Guardian of the Spiritualities ceases not till Confirmation. Gibf. Cod. 132. 133. — Godolp. Rep. in the Introduction, pag. 9. says it ceases as soon as a new Bishop is consecrated to that See that was vacant, or otherwise translated, who needs no new Consecration.



(U. e) Ecclesiastical Courts. High Commission.

1. **I**n the Diocess of Sarum, within the Hamlet of Safferton, is a Chapel of Ease, which is within the Parish of Trowbridge, and in which Chapel the Parson of Trowbridge had used to find a Chaplain to say Divine Service for the Inhabitants of the Hamlet, The Parson of Trowbridge refused to find one to say Divine Service accordingly; He may be sued for this before the High Commission; for tho' it be not any of the great Exorbitant Offences, yet this Offence is Publick, and not Private; For he refused to celebrate divine Service, P. 6. Ja. B. between Sir J. Uniueux and Paller. Contra P. 6. J. B.

2. A Parson may be sued in the High Commission Court for preaching against the *Book of Common Prayer*, and refusing to celebrate divine Service according to it; For it is a Publick Offence. *B. R. Cleyncey and Franklin's Case* adjudged. *M. 7. Ja. B. Parson Munnell's Case.* Per Curiam adjudged.

3. A Man cannot sue a Contract of Marriage before the High Commissioners; Because this is a Civil Cause, and from their Sentence no Appeal lies. *M. 8. Ja. B. between Clifford and Huntley.* Resolved, and Prohibition granted.

4. A Divorce cannot be sued before the High Commissioners, Because it is a Civil Matter, and not criminal, and therefore a Divorce cannot be sued before them; Because no Appeal can be sued thereupon they being the highest Court; But ought to be before the Ordinary. *M. 7. Ja. B. per Curiam.* and Prohibition granted accordingly.

5. A Man cannot be sued in the High Commission for the Profanation of the Sabbath, but ought to be sued for it before the Ordinary. *M. 8. Ja. B. per Curiam.*

6. So a Man cannot be sued there for carrying of Wood upon a Holyday, as *St. Luke's Day*; But ought to be sued before the Ordinary. *M. 8. Ja. B. Atmer's Case.* per Cook.

7. So a Man shall not be sued there for Keeping of Open Shop upon a Holyday. *M. 8. Ja. B.*

ally, resolved that the High Commissioners could not punish any Man for *working on a Holyday*, albeit it be a Matter of Ecclesiastical Censure, but ought by the true Meaning of the Statute of 1 Eliz. to be punished by the Diocesan 4 Inst. 332.

8. The Vicar of the Church of D. cannot sue the Parson of the same Church (who has the Advowson appropriate) before the High Commissioners for a Pension issuing out of the Parsonage, the Parsonage being late Parcel of the Possessions of a Monastery, because this Court was appointed for exorbitant Offences, and not for Meum & Tuum, between Party and Party, and the Statute of 34 H. 8. has ordained that Suits may be for such Pensions in the Court of the Ordinary. *M. 5. 5. Ja. B. between Roper and Bullbroke.* Adjudged per Curiam.

Roper's Case says it was resolved, That the said Commissioners had no Authority, nor Commission in the said Case.

9. If one sues another in the High Commission, for not standing at the Preamble of the Creed, but sitting and saying that the Constitutions of the Bishop were not *Lege Divina* [a Prohibition will be granted] because it is not any Enormous Offence. *M. 8. Ja. B. Jenner's Case.* per Curiam.

10. If a Woman sues for Alimony against her Baron in the High Commission a Prohibition lies, because it is not an Enormous Crime within the Words of the Statute of 1 El. but a Civil Cause, which belongs to the Ordinary of the Place where &c. *M. 17. Car. B. per Curiam* between **Sir Edwin Pocrell* and his Wife, a Prohibition granted. Between *Cleberry* and his Wife Prohibition granted. Between *Sir Edmond Pleden* and his Wife *M. 8. Ja. Rot. 912. Langton's Case* *M. 8. Ja. Rot. 109. Multon's Case* *Hill. 8. Ja. Rot. — Furrey's Case.* *M. 4. Car. Rot. 1603. Stanbye's Case* *Mich. 4 Car. Bayle's Office, Luck's Case.* And therefore in King James's Time, it was resolved by all the twelve Judges, That they ought not to hold Plea of Alimony; And upon that, Alimony was left out of their Commission for five Years after. 7 Ja. Rot. 1154. † *Langdale's Case.* Prohibition granted. And in B. R. divers imprisoned for Alimony, at least 20, [were] bailed.

mission, that it does not make it Law if it be not within the Statute of 1 Eliz. to which *Crawley, Reeve,* and *Foster* J. agreed; And they all agreed. That they may as well charge one Land with a Rent-Charge, as Grant Alimony out of it. — † 12 Rep. 58, 59, 60. *Mich. 6 Jac. S. C.*

In Atmer's Case 11 Q. Eliz. Reign, the whole Court of of Exchequer, judicially, albeit it be a Matter of Ecclesiastical Censure, but ought by the true Meaning of the Statute of 1 Eliz. to be punished by the Diocesan 4 Inst. 332.

Fol. 225.

*Mar. 80. Patch 17 Car. S. C. and Barks Ch. J. said Although there are Precedents that the High Commission have held Plea of Alimony, and granted the same, yet it was not Law. And altho' Alimony be exacted in their Com-

The High Commission Court in Causes Ecclesiastical, was by Letters Patents, and that by Force and Virtue of the Statute of 1 Eliz. cap. 1. The Title whereof is, An Act restoring to the Crown the ancient Jurisdiction Ecclesiastical &c. the High Commissioners might, if they were competent, that is, if they were Spiritual Persons,

11. The High Commission Court, which was erected in virtue of 1 El. cap. 18. being abolished by Stat. 16. Car. 1. cap. 11. the Extent and Exercise of that Authority *are now Matters of mere Speculation*, and Curiosity; and therefore it may only be observed, in general, that, *while that Court stood, there were many and great Contests between it and the Courts of Westminster-Hall concerning the Extent of the Jurisdiction assigned and limited by this Act*; The Commissioners, on one hand, not confining themselves to such Crimes as might properly be called Enormous (Herefy, Schism, Polygamy, Incest, and Recusancy) but taking Cognizance of Adultery, Alimony, Defamation, Laying violent Hands on a Clerk. Misbehaviour of Clergymen in their Functions, and the like, the Cognizance of which, the Judges affirmed to belong, of right, to the standing Ecclesiastical Courts, and not to be Enormities within the Meaning of this Statute; alledging further, that the Exercise of Jurisdiction, in these and the like Cases, by the High Commissioners, would not only prejudice all the Bishops of England in their Ecclesiastical Jurisdiction, but would be also grievous to the Subject, who must be drawn up from all the remote Parts of the Realm, when, before their own Diocefan, they might receive Justice at their own Doors. Much of this kind is to be met with in the Reports of that Time, particularly in my * Lord Coke; who strenuously resisted the Encroachments of the High Commission; and he, and the other Judges, restrained them, in many Instances, by Prohibitions. Gibf. Cod. 50.

proceed to Sentence of Excommunication What the Power of this Court was, and whether they might in Causes Ecclesiastical, proceed to Fine and Imprisonment, is at large examined by the Lord Coke in the 4th Part of his Institutes, where he reports the Judgment and Resolutions of the whole Court of Common Pleas thereon, Pasch. 9 Jac. Reg. upon frequent Conferences and mature Deliberation, set down in Writing by the Order and Command of King James, likewise whom, and in what Cases the Ecclesiastical Court may examine one upon Oath, or not (there being a penal Law in the Case) and whether the Saying, *Quod nemo tenetur seipsum prodere*, be applicable thereunto. Godolph. Rep. 118. cap. 11. S. 14. cites Trin. 13 Jac. B. R. Burroughs, Cox &c. against the High Commissioners, Bulstr. Par. 3. — 3 Bulst. 48. to 54. — * See the 12 and 13 Reports throughout, & 4th Inst. 324 to 335.

(X. e) Convocation of the Clergy. [Power of Convening.]

Resolved. Tr. 8 Ja. That a Convocation cannot assemble at their Convocation without Assent of the King. 2. Nor after their Assembly confer to constitute any Ca-

1. THE Archbishop of Canterbury cannot hold a Council for his Province without the King's License; For such Council held by Hubert Archbishop of Canterbury was prohibited by Fitz Peter Chief Justice, because he had not the King's Licence; But he would not obey it. Speed. 487.

2. 13. El. 3. Rot. Parl. M. 1. There is a Writ for a Convocation of the Clergy of the Province of Canterbury * at Paul's, and another for the other of York. Vide Statute 25 H. 8. cap. 19. where the Clergy of England acknowledge, that the Convocations of the same Clergy is, and always hath been, and ought to be assembled only by the King's Writ.

3. Nor execute any, which, upon Conference, they shall conclude upon without Royal Assent. 4 Nor after Royal Assent, but with these four Limitations 1. That they be not against the King's Prerogative. 2. Nor against the Common Law 3. Nor against any Statute Law. 4 Nor against any Custom of the Realm. And all this appears by the Statute. 25 H. 8. 19. and this was but an Affirmance of what was before the said Statute. 12 Rep. 72. Trin. 8. Ja. — *Orig. is (et)

3. The Convocation is under the Power and Authority of the King. 21. E. 4. 45. b.

4. 23 H. 8. cap. 19. Enacts that, The Convocation shall be assembled by the King's Writs.

5. The

5. The High Court of Convocation is called the Convocation of the Clergy, and is the highest Court Ecclesiastical, where the whole Clergy of both Provinces are either present in Person, or by their Representatives. They commonly meet and sit in Parliament-time, consisting of two Parts, viz. the Upper-House, where the Archbishops and Bishops do sit; and the Lower House where the inferior Clergy do sit. This Court has the Legislative Power of making Ecclesiastical Laws, is commonly called a National Synod, convened by the King's Writ directed to the Archbishop of each Province for summoning all Bishops, Deans, Archdeacons, Cathedrals, and Collegiate Churches, assigning them the Time and Place in the said Writ; But one Proctor sent for each Cathedral and Collegiate Church, and two for the Body of the inferior Clergy of each Diocese may suffice. The higher House of Convocation, or the House of Lords Spiritual, for the Province of Canterbury consists of 22 Bishops, whereof the Archbishop is President; the Lower-House, or House of Commons Spiritual consisting of all the Deans, Archdeacons, one Proctor for every Chapter, and two for the Clergy of each Diocese, in all 166 Persons, viz. 22 Deans, 24 Prebendaries, 54 Archdeacons, and 44 Clerks, representing the Diocesan Clergy. Both Houses debate and transact only such Matters as his Majesty by Commission allows concerning Religion and the Church. The Archbishop of York at the same time, and in the like Manner, holds a Convocation of all his Province at York, constantly corresponding, debating, and concluding the same Matters with the Provincial Synod of Canterbury. The Antiquity of this Court of Convocation is very great, for (according to Beda) St. Augustin An. 686, assembled in Council the Britain Bishops, and held a great Synod. The Clergy was never assembled or called together at a Convocation by other Authority than by the King's Writ. Vid. Parl. 18 E. 3. nu. 1. Inter Leges Inæ, An. Dom. 727. Godolph. Rep. 98, 99. cap. 11. S. 2.

S. P. Ibid. 586. cap. 41. and says, That among the Laws of H. 1. cap. 8. it was anciently called Church-ge-mote. — S. P. Wood's Inst 500. — In the Province of York two Proctors are sent to the Convocation for every Archdeaconry; but in the Province of Canterbury, two only for every Diocese. As there are two Houses of Convocation, so there are two Prolocutors or Speakers; one of the Bishops sometimes in the Upper-House, chosen by that

House; another in the Lower-House, chosen there and presented to the Upper House. The Archbishop is the President, and prorogues and dissolves it at the Direction of the King. For the Convocation is under the Power and Authority of the King. Wood's Inst. 500.

(Y. e) The Power of the Convocation.

1. **THE** Convocation has not any Power to do any thing to bind the Temporality. 20 H. 6. 13.

12 Rep. 72.) may make Constitutions by which those of the Spirituality shall be bound, (because they all, by Representation, or in Person, are present) but not the Temporality. By which it is to be hoped, he did not mean, that when Canons and Constitutions are framed by the Ecclesiastical Legislature about Matters merely Spiritual, and being enforced by Ecclesiastical Censures for the Improvement of the Discipline of the Church, and confirmed by the King as supreme Head of the Church, that such Confirmation has not Power enough to bind the Laity. This would look as if the Laity had nothing to be saved but their Estates, nor the Clergy any thing to do, but to save themselves. Much truer, undoubtedly, is the Doctrine delivered by Vaughan in the Case of Grove and Elliot. The Convocation, with the Licence and Assent of the King, under the Great Seal, may make Canons for Regulation of the Church, and that as well concerning Laicks as Ecclesiastics. All that is required of them in making new Canons is, that they confine themselves to Church Matters. Upon the same Foundation he declares in the Case of Hill and Good, that a Canon so made is the Law of the Kingdom as well as an Act of Parliament. Gibb. Cod. 974.

2. The Convocation has no Power to allow or disallow the Patents of the King. 20 H. 6. 13.

3. 2 H. 4. Rot. Parl. B. 24. a Writ is granted by the Advice of the Lords Temporal in Parliament to the Sheriffs of London, and this is subscribed per ipsum Regem & Concilium in Parlamento, by which the Sheriffs are commanded to burn William Sautre, who was before condemned

See (X. e) pl. 1, 2 in Marg. —

Fol 226.

See Canons.

A Convocation (says Id. Coke,

Br. Ordin. ry, pl. 1. cites S. C.

condemned for a Relapsed Heretick by the Archbishop of Canterbury, Apostolicæ sedis Legatum, and the other Suffragans, and all the Clergy of the said Province in Concilio suo Provinciali Congregat. Juris Ordine.

4. 31 H. 8. cap. 14. The six Articles are resolved and agreed, (being Matter of Religion) by the Assent of the King, the Lords Spiritual and Temporal, and other learned Men of his Clergy in their Convocation, and by the Assent of the Commons; but afterwards they are enacted by the King, Lords Spiritual and Temporal, and Commons in Parliament, and No Mention of the Convocation.

5. 21 R. 2. cap. 2. 12. Enacted by Assent of the Lords Spiritual and Proctors of the Clergy &c.

See Heresy
&c.

6. 1 El. cap. 1. Proviso that those who shall have Jurisdiction by Letters Patents shall not have Power to adjudge Heresy but in such Cases which have been before adjudged &c. Or such as hereafter shall be ordered, judged, and determined to be Heresy by the High Court of Parliament of this Realm, with the Assent of the Clergy in their Convocation.

7. The Convocation hath Power to make Holydays or Fasting Days. 20 H. 6. 13.

S P. per

Coke Ch J.

but they

ought to be according to the Law and Custom of the Realm. Noy 139. cites 21 H. 6. 14. and 21 E. 4. 46.

See Presen-
tation (M.
a. 2)

8. The Convocation hath Power to make Constitutions Provincial, by which those of Holy Church shall be bound. 20 H. 6. 13.

9. 13 El. cap. 12. Ordains, That the Articles agreed by the Archbishops and Bishops of both Provinces and all the Clergy in the Convocation held at London &c. shall be read by the Incumbent, or otherwise he shall be ipso facto deprived.

10. 18 E. 1. Rot. Pat. Memb. 24. Rex misit Rogerum extraneum & Hugonem Fil. Ottonis Senescal. Hospiti Regis Archiepiscopo Cantuar. & omnibus Episcopis & aliis Prelatis apud London Convocatis ad appellandum pro Rege, ne in Concilio & Congregatione illa contra Coronam & Dignitatem nostram aliquid statuere præsumant; Mandantes eis quod sicut Barones vestras (quas de nobis tenetis) diligitis, nullo modo præsumant Concilium tenere de aliquibus, quæ ad Coronam vel Personam nostram vel statum Consilii nostri pertinent; & Sciatis pro certo, quod si feceritis, nos inde ad vos & Barones vestras capiemus; Alio he commands them Ad Erhortandum & Robendum vos & Clerum vestrum, ut nobis &c. Subventionem faciatis Liberalem.

Their Ju-

* Fol. 22.

isdiction

was to deal

with Here-

tics, Schisms,

and other

mere Spiritual

and Ecclesi-

astical Causes,

and therein they did proceed

Juxta Legem Divinam & Canones Sanctæ Ecclesiæ;

And as they could never assemble together of themselves, but were always called together by the King's Writ,

so were they oftentimes commanded by the King's Writ to deal with nothing that concerned the

King's Laws of the Land, his Crown and Dignity, his Person, or his State, or the State of his

Council or Kingdom. 4 Inst. 322. cap. 74.

11. 7 E. 1. Rot. Pat. Memb. 6. Inhibitio Archiepiscopo & omnibus Episcopis & aliis Prelatis apud Lambeth conventuris, ne * aliquid statuant in Præjudicium Regis, Coronæ vel Dignitatis suæ.

12. Rot. Pat. 25 E. 1. Part 1. Memb. 9. Hugh le Dispenfer [was] assigned to forbid in the Name of the King to all the Clergy assembled at London at this time, that they do not make nor ordain any Ordinance which may turn in Prejudice of the King or his Ministers, or those of his Peace.

Parish

Clerks were

heretofore

Real Clerks;

of whom every Minister had at least one to assist under him, in the Celebration of Divine Offices; And

notwithstanding he was maintained by the Parishioners, he was appointed to the Office by the Minister, as

13. In 44 E. 3. in a Synod, a Canon was made, that the Parson of every Church in England should appoint the Clerk of the Parish.

well according to the Constitution of Archbishop Boniface 45 H. 3. in the Year 1261, as by the Custom of the Realm. Gibs. Cod. 240.

14. In another Synod held 1603, a Canon was made to the same Effect, and yet this does not take away any Custom where the Parishioners or Churchwardens have used to appoint the Clerk; because it is Temporal, which cannot be altered by a Canon. *24 Ja. B. R. Walpole v. Gale, per Curiam, and by the Council* *Since the making of this Canon, the Right of putting in the Parish Clerk has often been contested between Incumbents and Parishioners for maintaining the Authority of the Canon, in Favour of the Incumbent, against the Plea of Custom in Behalf of the Parishioners; and Prohibitions have been prayed and always obtained. Gibs. Cod. 240, 241.*

[For more as to Clerks of Parishes, see Clerk of a Parish.]

15. Rot. Parl. 18 E. 3. R. 12. The Commons pray, That no Petition made by the Clergy, which may be in * Decrease or Damage of the People, or of the Commonalty, be granted till it be tried by the King and all the Council, that without Damage of the Great Men, or of the Commons it may be well observed. Answer, It pleases the King and his Council that so it shall be. * Orig. is (Decrees) † Orig. is (Grants.) ‡ Orig. is (Borrowment for puistener.)

16. Rot. Parl. 18 E. 3. R. 23. The Petitions of the Clergy, and Answer of the King, and granted by him under his Seal.

17. 2 H. 4. cap. 5. It is recited that the Lollards preach &c. to the great Peril of the Souls of the People, and of all the Realm of England, as now plainly is found and sufficiently proved before the Reverend Father in God the Archbishop of Canterbury, the Bishops and other Prelates, Masters of Divinity, and Doctors of Canon and Civil Laws, and a great Part of the Clergy of the said Realm, especially assembled for this Cause. (It seems it was a Convocation in which the Civilians were, who are Laymen.)

18. The Jurisdiction of the Convocation is only touching Matters merely Spiritual and Ecclesiastical, wherein they proceed Juxta Legem Divinam & Canones Sanctæ Ecclesiæ. Godolph. Rep. 99. cap. 11. S. 2. The Jurisdiction of the Convocation may be exercised, in making Canons with the King's Licence and Assent, in Examining and Censuring Heretical or Schismatical Books or Persons. But then an Appeal lies to the King in Chancery, or to his Delegates, as hath been lately resolved. It is the Legislative Power in the Church, and the Canons that are made concerning the Church with the Royal Assent, bind the Clergy, but not the Laity. Wood's Inst. 500.

19. Serjeant Hawkins says, It is certain that the Convocation may declare what Opinions are Heretical; but that it has been questioned of late, Whether they have Power at this Day to Convene and Convict the Heretic. Hawk. Pl. C. 4. cap. 2. S. 3.

(Z. e) The Privileges of the Convocation.

1. 8 H. 6. cap. 1. ALL the Clergy from henceforth to be called to the Convocation by the King's Writ, and their * Servants and Familiars shall for ever hereafter Use and Enjoy such Liberty and Immunity in Coming, Tarrying and Returning, as the Great Men and Commonalty of the Realm of England, called or to be called to the King's Parliament, have Used, or ought to Have and Enjoy. In the Journals of the House of Lords, we find several Applications to their Lordships for Redress, in Cases where this Liberty of the Convocation-Clergy hath been invaded, which their Lordships have accordingly granted. Gibs. Cod. 975.—* S. P. Godolph. Rep. 99. cap. 11. S. 2.

(A. f) Bishop and * *Temporalities*. For what Causes the Temporalities shall be *seised*.

Fol. 223.

* Temporalities are all those Things which Bishops have by Livery

of the King, as Castles, Manors, Lands, Tenements, Parsonages, Tithes, and all other Certainries of which the King is answered during the Vacation. Savil 52. Pasch. 25 Eliz. Anon.—† S. P. Br. Refeiser, pl. 9. cites 21 E. 3. 3.

Br. Contempts, pl. 18. cites 38 Aff. 22. S. C. 2. If a Prior be attainted in an Attachment upon Contempt, for Not admitting a Varlet to his Corody, his Temporalities shall be *seised*. 38 Aff. adjudged.

Br. Contempts, pl. 19. cites S. C. 3. If a Bishop be attainted in an Attachment upon a Prohibition, his Temporalities shall be *seised*. 21 E. 3. 3. 60. b. adjudged. —Br. Quare Incumbravit, pl. 1. cites S. C. —Br. Refeiser, pl. 9. cites S. C.

S. P. Br. Refeiser, pl. 11. cites 24 E. 3. 25. —S. P. Br. Quare Impedit, pl. 9. cites 24 E. 3. 55. —Br. Forfeiture de Terre, pl. 106. cites S. C. And the King shall have the Profits till he restore to him the Temporalities, as it seems in a Quare Impedit.

5. 10 E. 1. Rot. Wat. Memb. 3. Mandatur quod omnes Terræ & Tenementa Episcopi London capiantur in manus Regis & inde faciend' prout Rex injunxerit Occasione cujusdam Transgressionis enormis Nobis per ipsum Episcopum factæ.

6. If a Bishop be attainted in a Trespass against the Peace, his Temporalities shall be *seised*; for he shall not be taken as another Man, because he is a Prelate. 29 E. 3. 42.

See (E. f.) pl. 7. The Case of the Abbey of St. Edmundsbury. 21 E. 3. 60. 7. 19 E. 3. Rot. 114. Episcopus Norwich implacitatur per Regem for proceeding in the Ecclesiastical Court against the Abbot of St. Egid. against the Privilege of the said Abbey, granted by the King before the Conquest &c. and the Defendant found Guilty by Jury, it is adjudged that the Temporalities of the Bishop shall be *seised*; and that in such Cases for Contempt to the King, the Bodies of the Bishops caperentur prout per diversa Recorda Progenitorum Regis liquet. Tamen quoad hoc dies data est.

8. In *Escape against the Abbot of Westminster of a Clerk attaint*, it was prayed that the Temporalities should be *seised*; to which it was not answered, therefore *quare*. Br. Refeiser, pl. 17. cites 21 Aff. 12.

If the Ordinary challenges a Clerk 9. 25 Ed. 3. 6. Enacts that the Bishops Temporalities shall not be *seised* into the King's Hands for a Contempt, but they shall pay a reasonable Fine.

who cannot read, he shall make Fine, and if he * refuses a Clerk who can read, he shall make Fine; and if he suffers Purgation to be made by a Clerk contrary to the Common Law, this is an Escape; but the Temporalities of the Ordinary shall not be *seised* in such Cases, because by this Statute the Justices shall assess a Fine without *seising*. Br. Ordinary, pl. 12. cites 9 E. 4. 28. —S. P. Br. Clergy, pl. 2. cites 7 H. 4. 41. —* S. P. And he is not Judge of the Prisoner, nor of his Reading, but is [only] *Minister*, and the Justices are as Judges. Br. Ordinary, pl. 16. cites 7 E. 4. 29. —Ibid pl. 20. cites 7 H. 4. 41. S. P. But per Gasloign, If the Ordinary challenges one for a Clerk who is No Clerk, the Court shall *seise* his Temporalities. —And 2 Inst. 164 says, that anciently his Temporalities were liable to be *seised* for such Contempt. But since this Statute it is held to be fineable only —And 2 Hawk. Pl. C. 302. cap. 33. S. 116. says, It seems to be generally agreed that he shall now be only fineable in such Case and the like, for obstinately persisting to return that a Prisoner reads as a Clerk, or the contrary &c. against the declared Sense of the Court.

10. Issue was taken in Case of a Corody, if the King was Patron of a Priory, (where he had presented one to the Corody, by reason that his Progenitor founded a Chapel there before any Priory was there) or if the Bishop of E. and his Predecessors de tempore have been Patrons there? And the Jury found for the King; for which Cause, and because the Priors had made Elections of Priors there without Licence of the King, to the Disinherison of the King and his Crown, it was agreed, that the King recover the Patronage, and that the Temporalties be seised into the Hands of the King for the Disinherison and Contempt, 'till he had made Satisfaction to the King. Br. Presentation. pl. 39. cites 38 Aff. 22.

11. If the King presents and his Clerk is in, and after the King revokes his Presentation, if the Bishop does not remove the Incumbent, the King shall seise the Temporalties. Per Thorp. Br. Ordinary. pl. 23. cites 44 E. 3. 35, 36.

12. Where the King writes to the Bishop to assail a Man excommunicated for a Cause which does not appear to the Bishop, and he does not do it, the King shall seise his Temporalties. Br. Refeifer. pl. 8. cites 14 H. 4. Br. Excommunication. pl. 5. cites 14 H. 4. 14 S.C.

13. An Archbishop is attainted of Treason, the King shall have the Temporalties in Jure Coronæ, not in Jure Vacationis; for he remains Archbishop until Degradation and Deprivation. Jenk. 210. pl. 44. cites D. 108.

(B. f) What Profit the King shall have thereby.

[1.] IF the King has Judgment to seise the Temporalties of the Bishop for Contempt, he shall have the Presentation to the Prebend annexed to the Temporalties which shall become void after. 21 E. 3. 29. Adjudg'd. Tho' the King has the Temporalties as a Distress 'till a Fine made to him by the Bishop. 21 E. 3. 29, 30. Adjudg'd.

Possession, and not only the Profits.— Br. Scire facias. pl. 101. cites S. C. — Br. Seisin. pl. 9. cites S. C.

2. Quare Impedit by the King of the Advowson of B. and made Title by the Possessions of the Abbot of Reading in his Hands; and the Defendant said, that King H. Great Grandfather of King J. granted to the Abbot and his Monks, that he and his Heirs should not meddle with the Possession of the House in the Time of Vacation, but that the Prior and Monks should have the Disposition of them for their Sustenance; and said, that they had enjoy'd it accordingly. And the best Opinion was, that the Grant is good, and that this Word (Possessions) shall be taken to be All which they shall have in Possession. And Per Chelr. Where a Man demands Franchise by Charters of the King before Time of Prescription, he shall not have it otherwise than it has been used, quod non negatur; and quare the Reason of those Words (for their Sustenance); for Presentation to Advowson is not Sustenance to them. Br. Patents. pl. 22. cites 39 E. 3. 21.

3. The Master and Fellows of Merton College in Oxford were Patrons of a Beneice within the Bishoprick of Durham, and the Incumbent died, and the Church remained void by six Months; and afterwards the Bishop was deprived. Whether the Collation belong'd to the King or to the Archbishop of York, Metropolitan, or not. Quære. D. 87. b. pl. 103. Patch. 7 E. 6. The Master and Fellows of Merton College's Case.

tualties. It seems that it is because that it comes by reason of the Spiritualities.

Fol. 229.

(C. f) *Visitations. What Persons may be visited.*

1. **E**VERY Spiritual Person is visitable by the Ordinary. Davis 1. Commend. 72. b.

If to a Priory,
or a Dean and
Chapter, the
Court seem'd
of Opinion

that the Bishop, notwithstanding the Appropriation of the Benefice, might visit to see how the Church was served, Sacraments administered, &c. and might proceed to Suspension; but it was clear he could not deprive him. 10 Mod. 68 Mich. 10 Anne B. R. Dr. Harrison v Archbishop of Dublin.

2. If a Rectory has been appropriated to an Abby, the Visitation should cease as to the Rector; for the Abbot was not visitable as Rector for his Doctrine. Davis 1. Procyes 3. b. 73.

3. But all Abbeys and Priories of Common Right, if they were not lawfully exempt, were visitable as to their Rule and Order. Davis Procyes. 3. b. for they were Religious.

(D. f) Bishop. Visitation.

1. **D**EAN is visitable de Mero Jure by the Ordinary, for he is Spiritual. D. 10 El. 273.

2. If the Patronage of a Deanry be appointed to the King by a Statute, and that he and his Successors shall nominate him with a Saving of all Rights &c. to Strangers, except the Bishop, and after the King nominates a Dean, he is visitable by the Ordinary notwithstanding the Saving; for this goes to the Possessions, and the Deanry is Spiritual. D. 10 El. 273. 38.

The Ordinary hath in

some Cases a Power as to the Person, tho' not to the Place; for if the Parson of a Donative marries without a Licence or commits any Misdemeanor, the Ordinary may punish him. Wats. Clerg Law. 173, 174. — cites 3 Salk. 140.

3. The Ordinary has Power of Correction of a Parson. 20 H. 6. 46.

4. But not of an Abbot. 20 H. 6. 46.

5. Every Hospital, be it Lay or Spiritual, is visitable. Cook 10. Sutton's Hosp. 31.

6. When the Hospital of St. John of Jerusalem was surrendered and dissolved, and suppressed by the Act of 33 H. 8. and their Possessions vested in the Crown by the Act, yet the Visitation of them did not cease thereby, because their Corporation was not dissolved by it; But when they were Deraigned, and lost their Habit, Rule, and Order, for which they were visitable, then the Corporation was utterly dissolved, and upon this the Visitation ceased. Davis Procyes. 1. b. Agreed.

Fol. 230.

(E. f) What * Person shall visit.

* Wherever

there is a
Cure of
Souls, the
Church is vi-
sitable either
by the Bi-
shop, if it
belongs to
him; If to a

1. **B**y the antient Law of the Realm, the King has Power to Visit, Reform, and Correct all Abuses and Enormities in the Church. Davis 1. Procyes 4.

2. By the Statute in Time of H. 8. the Crown was but remitted and restored to its antient Jurisdiction, which was usurped by the Bishop of Rome. Davis 1. Procyes. 4.

Layman, he must make Delegates; If to the King, the Lord Keeper does it. Per Twissden J. Mod 12. pl 34. Mich. 21 Car. 2. B. R. in the Case of Clerke v. Heath.

3. D. 8. E. 3. B. R. Rot. 97. Episcopus Exon. attachiat. ad respondendum Domino Regi quare exerceret Jurisdictionem in Capella Regia Sanctæ Burianæ in Cornub. &c. bene placuit. ibidem. And Tr. 17. E. 3. Rot. 97. B. R.

4. The King himself shall visit his Free Chapels and Hospitals, and not the Ordinary. Davis. 1. Proveys. 4. 27. E. 3. 85. f. N. B. 42. a. The Lord Chancellor shall execute it for the King.

Gibb. Cod. 237. cites S. C. but cites it as in Time of E. 1.

Free Chapels may continue such, in point of Ex-

emption from ordinary Visitation, though the Head or Members receive Institution from the Ordinary. This appears beyond Exception from the King's Presentation of a Prebendary of the Free Chapel of Hastings, made to the Bishop of Chichester, and a Royal Mandate for Inslament, reciting the Admission and Institution of the Person Presented; Both which we find in the Register. Gibb. Cod. 237.

If the Bishop attempt to visit an Hospital of Royal Foundation, a Prohibition is presented in the Register Fol. 40. b. By the Tenor of which it appears, that De Jure Communi, the Chancellor of England for the Time being had the Right of Visiting all such Hospitals in the Name of the King. Gibb. Cod. 1147.

5. The Donatives of the King are not visitable by the Ordinary Davis. 1. D. & C. of Ferns. 46. temp. E. 6. Br. Prebendate. 21. 21 Aff. 29. 8 E. 3. Aff. 150.

An Incumbent of a Donative of the King's, as he comes to it merely by the

6. The Donatives of the King are properly visitable by the Chancellor. Davis. 1. 46. f. N. B. 42. A. And the King may make a Special Commission to this Purpose. D. 1. 46.

King's Let-

ters Patents, he shall not be visitable, nor deprivable, by any Ecclesiastical Authority, but by the Lord Chancellor, or by Commissioners under the Great Seal. 12 Rep. 41. in Nicholas Fuller's Case.

7. The Abbey of St. Edmond's-Bury was of the Foundation of the King, and exempt from every Jurisdiction of the Ordinary, that no Ordinary shall visit there, and after ordained in Parliament, that if the Bishop or his Successors visit against the Ordinance and Foundation, they shall forfeit 30 Talents, and after the Bishop is sued upon a Contempt for visiting contrary to this, and against the Prohibition of the King not to visit, and for this his Temporalties seized, and he forfeited the Talents. 21 E. 3. 60.

8. 8 E. 1. Rot. Claus. Memb. 8. Rex. Vic. Clouc. Præcipimus tibi quod non permittas Wigorn. Episcopum vel Offic. aut alios Ministros suos, Capellanos, Clericos, aut alios Ministros liberæ Capellæ de &c. quæ est de Hereditate J. S. infra Statem, & in Custodia nostra existentis visitare vel Jurisdictionem Ordinariam in eadem libera Capella exercere, aut in ea aliquid contra tenorem Inquisitionis, nuper de Præcepto nostro super hoc &c. attemptare &c. sed in eodem statu in quo hæc sic scriptus Patris predicti J. S. manuteneas, protegas & defendas durante Custod. & hoc nullo modo omittas &c.

9. 23. E. 1. Rot. Claus. Memb. 7. Because the Free Chapels of the King are exempt from the ordinary Jurisdiction, which the Dean and Official of London compels them to pay &c. Prohibition. 6. E. 1. Rot. Det. 9. 17. in Scheda amera. The King recites, Quod cum Ecclesia Omnium Sanctorum de Derby cum Præbendis & aliis Pertinent. suis sint libera Capella Regis, & ab omni Ordinaria Jurisdictione exempta, & Domina Papæ immediate Subj. &c. & Archidiaconus Derby Jurisdictionem ibi vindicat. Rex mandat quod prefato Archidiacono talem Jurisdictionem vindicanti in nullo obtineant.

10. If a Hospital be Spiritual, the Bishop shall visit. Co. 10. Sutton's 31. 8 Aff. 29. 8 E. 3. Aff. 150.

[So of Colleges] Every College has a Visitor, either by Appointment

11. If a Hospital be Lay, the Patron shall visit it. Co. 10. Sutton's 31. 8 Aff. 29. 8 E. 3. Aff. 150.

ment of the Founder, or of the Law. If it be a * Lay one, the Founder, or his Heirs; But if an Ecclesiastical one, then the Bishop of the Diocese is Per Holt Ch. J. Show. 74 Mich. 1 W. & M. Perkins v. — — — * S. P. Jetk 270. pl. 88 — It is said, in the Journal of Parliament; 11. 8. That

Visitors relating to Hospitals ought to be reform'd in Concocation; But tho' the Rule of the Canon is that Hospitals, de Jure Communi, were under the Inspection of the Bishop; And tho' also the Order of the Lords in Parliament implies plainly, that they understood the Statute 2 H. 5. cap. 1. to be an Affirmance of that general Right, without any Exception, but to those of Royal Foundation, since the Statute neither mentions nor implies any other, yet Lord Coke distinguishes between Spiritual and Lay Hospitals; and said, the Exemption from the Ordinary, in the Case of Sutton's Hospital, was but declaratory; For being a Lay Incorporation, he neither could, nor ought to visit it. Gibb' Cod. 1147. 1148. Holt Ch. J. held, that in Defect of a particular Appointment of a Visitor by the Founder, the Common Law makes the Founder Visitor, and it is not at his Pleasure, whether there shall be a Visitor or not; But if he is silent during his own Time, the Right will descend on his Heirs. And his Lordship said that it so appears by the Case in Yelv. 75. and 2 Cro. 60. where it is admitted on all Hands, that the Founder is Patron, and as Founder is Visitor, if no particular Visitor be appointed, and that so is 8 H. 3. 76 & 5 Aff. 29. so that Patronage and Visitation are necessary Consequents of each other; For this Visitorial Power was not introduced by any Canons or Constitutions Ecclesiastical; It arises from the Property which the Founder had in the Lands assigned to support the Charity. Skin 483. Trin. 6. W. & M. B. R. in Case of Phillips v. Bury. — Show Parl. Cases 45, 46. Accordingly, and there it was further argued, That in our old Books (deprived by Patron) and (deprived by Visitor) are all one; For this Authority to visit is a Benefit, that naturally springs out of the Foundation, and it was in his Power if he pleased to transfer it to another, and where he had so done, the other would have the same Right and Authority as the Founder had; That there is no Manner of Difference between an Hospital and a College except only in Degree: An Hospital is for those that are Poor and Mean, or Sick &c. A College is for another sort of Persons, and to another Intent; The former is to maintain and support them; This is to educate Them in Learning, that have not otherwise wherewithal to do it; But still it is much within the same Reason of that of an Hospital; And if in an Hospital the Master and Poor are incorporated, it is a College, having a Common Seal to act by, though it bears not that Name, because it is of an inferior Degree; And in both Cases there must be an Visitor, as both are Eleemosynary. — And 5 Mod. 404. Pasch. 15 W. 3. The King v. Blythe, it was held per Cur. That all Eleemosynary Corporations, who are to receive the Charity of the Founder, whereof a particular Visitor is not appointed, If they are Ecclesiastical, then the Ordinary of the Place is Visitor; But if they are Lay Corporations, then the Founder and his Heirs are perpetual Visitors. — 12 Mod. 232. Mich. 10. W. 3. Anon. Holt Ch. J. said he took it that the Corporation of a College being Lay, the Visitation belongs to the Founder and his Heirs, and if the Founder dies without Heir, that the Visitation shall go to the King; For which see 5 E. 4. Simon de Monford's Case, and said that this was his Private Opinion; And that whether a Right of Visitation should cleave was a Point which divided the Court in Dr. Patrick's Case; And said that there is a great Diversity between Abbot and Convent, and Master and Fellows, Mayor and Commonalty &c. For in Case of Abbot and Convent, there must be the major Part, and the Abbot besides, Because he acts only cum Consensu of the major Part of the rest; But in Case of Master and Fellows, &c. the Master himself is but Part of the Acting Part, and he is one of the Grantors as well as the Rest; And he said, That in case it be a Donative and a private Corporation, though it be Spiritual, yet he is of Opinion that the Visitation belongs to the Founder, though he does not, by express Words, reserve it to himself; For why should it of Common Right belong to the Ordinary? And whether the King may grant the Inheritance of a Visitation may be a Question; For it may be said to be Privity to his Person; But without doubt he may grant to whom he please to be Visitor for a Time.

12. If a Lay Hospital be erected, and no Visitor named, but Governors appointed, the Governors shall visit. Co. 10. Sutton 31.

If the Founder limits not who shall visit (says my Lord Coke) the Bishop of the Diocese shall, for which he refers to the Statute of 2 H. 5. cap. 1. and says nothing of his Distinction between Spiritual and Lay Hospitals. Gibb' Cod. 1151. — Gilbert Ch. B. said the Meaning must be, that when an Hospital is incorporated as a distinct Corporate Body, and Governors appointed; That (in point of Construction) is then a Paring with the Visitorial Power; For there can be no End in erecting the Governors, but to make them Visitors where the Poor are the Corporation, and the Revenues are lodged in them as a Corporate Body. Hill. 12 Geo. 1. G. Equ. R. 180. Case of Birmingham Scholl. — S. C. 2 Wm's Rep 325. Eden v. Foster.

13. All Abbies and Pories were visitable by the Ordinary, as to their Rule and Order of Common Right, if they had no Exemption. Dav. Pryor's. 3.

14. The Hospital of St. John of Jerusalem was visitable by the Ordinary of Common Right. Dav. Pryor's. 1. admitted. For they were Religious.

15. In the Statute of 25 H. 8. which takes away the Pope's Supremacy, there is a Proviso, (viz.) That the Archbishop of Canterbury, or any other Person or Persons, shall have no Power or Authority, by Reason of this Act, to Visit or Vex any Monasteries, Abbies, Pories, Colleges, Hospitals, Houses, or other Places Religious, which be, or were exempted before the Making of this Act, any Thing in this Act to the contrary thereof notwithstanding; but that Redress, Visitation, and Confirmation, shall be had by the King's Highness, his Heirs

Heirs and Successors, by Commission under the Great Seal to be directed to such Persons as shall be appointed requisite for the same, in such Monasteries, Colleges, Hospitals, Priories, Houses, and Places Religious exempt, so that no Visitation or Confirmation shall be from henceforth had or made in, or at any such Monasteries, Colleges, Hospitals, Priories, Houses, and Places Religious exempt by the said Bishop of Rome, nor by any of his Authority, nor by any out of the King's Dominions &c.

16. In the Statute of 31 H. 8. cap. 13. of the Dissolution of Monasteries, there is this Proviso, (viz.) That such of the late Monasteries, Abbies, Priories, Nunneries, Colleges, Hospitals, Houses of Friars, and other Religious and Ecclesiastical Houses and Places, and all Churches and Chappels to them, or any of them belonging, which before the Dissolution, Suppression, Renouncing, Relinquishing, Forfeiting, Giving up, or Coming unto the King's Highness, were exempted from the Visitation or Visitations, and all other Jurisdiction of the Ordinary or Ordinaries, within whose Diocess they were situate or set, shall from henceforth be within the Jurisdiction and Visitation of the Ordinary or Ordinaries within whose Diocess they, or any of them, be situate and set, or within the Jurisdiction and Visitation of such Person or Persons as by the King's Highness shall be limited or appointed, this Act or any other exempt Liberty or Jurisdiction to the contrary notwithstanding.

So that now there are no Places totally exempt from ordinary Jurisdiction, but either such as enjoy their Exemption upon the Foot of Common Law, as Free Chapels and Donatives (the first visitable only by Consuetudine)

from the King, and the second by Commission from the Donor) or such as the Crown may have exempted or shall exempt, pursuant to the Powers granted by this Statute. Gibb. Cod. 1018.

17. In the Statute of 1 & 2 P. & Mar. cap. 8. (which repeals the Statute of 25 H. 8. before mentioned here) there is this Proviso (viz.) Whereas by the Dissolution of Monasteries and other Religious Houses, certain Parish Churches and Chapels were before exempt from the Jurisdiction of the Archbishops and Bishop of the Diocess, and by special Exemption and Privilege from Rome, were under the Government and Order of the Abbots and Priors of those Religious Houses, which said Churches, by Colour of the said Exemptions, be now of special Grant from King H. 8. and King Edward, under the Rule and Government, and Jurisdiction of Laymen, who can no more enjoy that Supremacy over these particular Churches, than the King might over the whole Realm, Be it enacted, That all such Archbishops and Bishops in their Diocess, and all other Spiritual Persons having Jurisdiction, and their Ministers and Officers, and no Lay Person or Persons, in every Church and Place within the Precinct of the same, being exempt or not exempt, may freely and without Impediment execute their Spiritual Jurisdiction in all Points and Articles, as tho' no such Exemption or Grant had ever been made. But after there is a Proviso, that this shall not extend to toll or diminish the Privilege of the University of Cambridge or Oxford, nor the Privileges or Prerogatives granted before to the Churches of Westminster and Windsor, * nor the Tower of London, nor be prejudicial to such Temporal Lords and Possessors within the Realm, who by ancient Custom have enjoyed Probates of Testaments of their Tenants and others; but this Act is repealed by the Statute of 1 Eliz. cap. 1.

* Fol 232.

18. In the Statute of 1 Eliz. cap. 2. (which is an Act for uniformity of Common Prayer) there is a Proviso, (viz.) That all and singular Archbishops and Bishops, and every of their Chancellors, Commissaries, Archdeacons and other Ordinaries, having any peculiar Ecclesiastical Jurisdiction, shall have full Power and Authority by Virtue of this Act, as well to inquire in their Visitations, Synods, and elsewhere within their Jurisdiction, at any other Time or Place, to take Occasions and Informations of all and every the Things above mentioned, done,

committed

committed or perpetrated within the Limits of their Jurisdiction or Authority, and to punish the same by Admonition, Excommunication, Sequestration or Deprivation, and other Censures and Process, in like Manner as heretofore hath been used by the Queen's Ecclesiastical Laws.

19. In the said Statute 1 Eliz. cap. 2 it is enacted, That such Privileges, Jurisdictions, Superiorities and Pre-eminences, Ecclesiastical and Spiritual, as have been by any Spiritual and Ecclesiastical Power or Authority exercised, or may lawfully be exercised or used for the Visitation of the Ecclesiastical State and Persons, and for Reformation, Order and Correction of the same, and of all Manner of Errors, Schisms, Abuses, Offences, Contempts, and Enormities, shall for ever, by Authority of this present Parliament, be united and annexed to the Imperial Crown of this Realm; and that the King, his Heirs and Successors, shall have full Power and Authority by Virtue of this Act, by Letters Patents under the Great Seal of England, to Assign &c. to Use, Exercise &c. under the King, his Heirs and Successors, all Manner of Jurisdiction &c.

20. The same Place may well be visitable by two different Powers. So it is in the Case of every Cathedral and every Diocese, which are visitable as well by the Metropolitan as by the Bishop. Gibf. Cod. 1151.

21. The Archbishop of D. libell'd in the Spiritual Court against the Dean and Chapter there for denying to admit him to visit them. The Defendant suggested for a Prohibition, That the Chapel was of Royal Foundation, being first a Monastery of Royal Foundation, and afterwards translated into Dean and Chapter; and being a Donative, was exempted from the Visitation of the Ordinary. Upon a Prohibition the Plaintiff declared, That this Chapel was of Royal Foundation, and that the Ordinary had no Visitatorial Power there, but what he had by the Letters Patents of Creation 33 H. 8. which expressly provide, That the Archbishop shall have no Power over the Deanry, but such as he had over the Prior and Convent of the Holy Trinity Time out of Mind, which Priory was of Royal Foundation, and had Time out of Mind been visited by the King or his Chancellor. The Archbishop, after Oyer, pleaded That the King did further order and declare in the said Letters Patents, that the Church of the Holy Trinity should be the Archiepiscopal Seat of D. as it was before, and as it used to be; and the Archbishop should exercise no Jurisdiction there, but such as he used when it was a Priory; and that Time out of Mind the said Archbishop, and his Predecessors, Archbishops of Dublin, kept their Cathedrals in this Church; and that the Prior and Convent before, and the Dean and Chapter since the Translation, were the Chapter of the said Archbishop, and Time out of Mind had been visited by them, as Occasion required, and traversed that the Priory was of Royal Foundation. Upon a special Demurrer Judgment was given in C. B. in Ireland for a Consultation, and that Judgment affirm'd in B. R. there. Upon Error brought in the House of Peers here, it was argued, That this being an Ecclesiastical Corporation, is by common Intendment subject to the Visitation of the Ordinary of the Place, unless by the Patent of Creation there had been a Visitor appointed by the Founder; for all such are Prima Facie subject to the Jurisdiction of the Ordinary, tho' founded by the Crown, and so is *Corbet's Case*, in D. 273. That the only material Point is, Whether this was of Royal Foundation, or not? which was not the Point of the Case between this * Archbishop and Dr. Harrison some Years past, who was a Prebendary of this Church. For if the Priory was not of Royal Foundation, the Deanry, into which it was translated, cannot be so; but if it was of Royal Foundation, then the Translation into Dean and Chapter is no Prejudice to the Founder, he remaining Founder still; for nothing is alter'd but the Monastick Rule and Habit; and so it was held in the *Dean and Chapter of Norwich's Case*. 3 Rep. 73. 30 H. 8. at which Time the Priory and Convent of the Cathedral Church of the Holy Trinity of Norwich, was translated into the Dean and Chapter. So that

* See (C. f.)
Marg. pl. 2.

if nothing is altered by the Translation, the Founder is not deprived of his Right of Patronage, neither is the Visitor of his Right of Visitation; because it is still the same Body Corporate, tho' by another Name. And Judgment was affirm'd. 8 Mod. 183. Mich. 10 Geo. 1724. Trinity-Chapel in Dublin v. Archbishop of Dublin.

(F. f) *Exemptions.* [Visitation.]

1. **T**HE King might exempt Abbeyes from the Visitation of the King the Ordinary; for the King is Supreme Ordinary. Da. Commend. 73.

Justification of the Ordinary. This is agreed on all Hands; and our Law-Books add, That he may licence any Subject to found such a Chapel, with such Exemption; which however positively said, seems not to be a self-evident Truth; and yet I find not any Instances alleg'd to confirm it. That many Free Chapels have been in the Hands of Subjects, is not denied; but it does not therefore follow, that those were not originally of Royal Foundation. Gibb. Cod. 237. — The King may erect a Free Chapel, and exempt it from the Ordinary. And I think he may do it without Consecration, as in the Instance of Whitehall; but tho' the Codex is unwilling to grant it, yet our Books are very express, that the King may licence a Subject to found a Free Chapel, and exempt the same from the Jurisdiction of the Ordinary. Watf. Clerg. Law 646.

(G. f) *Appeal.* * *Delegates.*

1. **B**Y the Statute 25 H. 8. Appeals to Rome are Prohibited, and Ordained, that for Default of Justice in any of the Courts of the Archbishops of this Realm &c. it shall be lawful to appeal to the King in his Court of Chancery, and thereupon a Commission shall be granted &c. And by a Proviso circa finem Statuti, an Appeal is given to the King in Chancery, upon Sentences in Places exempt, in the same Manner as was used before to the See of Rome.

* The Court of Delegates is created, being the Judges are delegated, and sit by Force of the King's Commission under the Great Seal,

upon Appeals to the King in three Cases. 1st When a Decree or Sentence is given in an Ecclesiastical Cause by the Archbishop, or any of his Officials. 2^{dly}. When any Decree or Sentence is given in any Ecclesiastical Cause in Places exempt, or Peculiar belonging to the King, or to an Archbishop. 3^{dly}. When a Sentence is given in the Court of Admiralty according to the Civil Law. Wood's Inst 525. — S. P. 4 Inst 330. cap. 74 — S. P. Godolph. Rep 116. cap. 11. S. 13.

† The Statute goes on and says, That a Commission shall be granted under the Great Seal, to certain Persons to be named by the King, who shall thereby have Power, as in Cases of Appeal from the Admiralty Court, to hear and determine all such Appeals, and the Causes concerning the same, and from whose Decree or Sentence no further Appeal shall be had. But note, In Case where a Sentence is given by Commissioners delegated by the Prince, as by the late Visitors Anno 1 Eliz. the Party grieved appealing, such Appeal is out of the Orders prescribed by the Statute of 24 H. 8. and 25 H. 8. cap. 19. And the Prince in that Case may grant a new Commission to others to determine that Appeal. And this was done by the Opinion of several Justices in Goodman's Case, deprived of the Deanry of Wells. 4 Inst. 340. cap. 74. cites a Manuscript Report of Lord Dyer.

The Bishop of Winton is made Visitor of Magdalen College in Oxford by the Flunder, and exempted from any Ordinary &c. Dr. Coveney President of the said College, was deprived by the Visitor; and from his Sentence appealed to the Queen in Chancery. It was resolved by the Justices to whom this Appeal was refer'd, they having conferr'd with Civilians, That the Appeal doth not lie; for it is out of the Statutes 24 & 25 H. 8. cap. 12. For this Deprivation is a Matter merely Temporal, and as if done by a Lay Patron. So that if he be expelled he may have Afsise, or such Suit at the Common Law. D. 209. pl. 20. Mich. 3 & 4 Eliz. Dr. Coveney's Case — S. C. cited 4 Inst. 340. as Dr. Coveney's Case, President of New College in Oxford. — S. C. cited Arg 4 Mod. 112. 116. And there the Case of Shirax in the Year-book of E. 3. Fitzh. Tit. Afsise, pl. 150 is cited, that he being deprived by the Ordinary where the Foundation was Lay brought an Afsise; and it was held good. And Ibid. 124 The Court said that Shirax having a Donative, and being deprived by the Archbishop of York as Ordinary and Visitor, and another being collated, the Question was, Who was Visitor? And it appeared plainly that it could not be the Archbishop, because the Matter was not Spiritual, it was in Case of a Lay Hospital, which had no Spiritual Possession, it was neither College nor Convent; and therefore the Afsise was held good, which proves nothing in the Case of a Spiritual Corporation; for if the Dean had been

been by a proper Visitor, and one who had a lawful Jurisdiction, his Sentence would have been final, and no Appeal could have been brought to examine it. Trin. 4 W. & M. B. R. in Case of Philips v. Bury.— Show. Parl. Cases 4. Arg. in the Case of Philips v. Bury, it was insisted that this Case of Dr. Coveney in D. 209. nor that of *Bagges's Case* 11 Rep. 99. of an Appeal lying because of No Appeal, will not upon Perusal warrant the Distinction; for that the Party is as much concluded in the one Case as in the other, and that it is reasonable to suspect that Case not to be Law, because that is impracticable which it is brought to prove. The Head of the College cannot maintain an Appeal for his Office of Headship; He hath not such an Estate as will maintain that Writ; He hath no such Sole Seisin; The whole Body of the College has an Interest therein; He has no Title to the Monies in his own Right, till a Distribution thereof is made by Consent; He is the only visible Head indeed of the Body, but has no single Right. And that in *Applesford's Case* it was said by Lord Hale, that it was impossible he could have an Appeal.

Note, It is commonly said, there must be a Warrant under the Sign Manual of the King before the Lord Chancellor or Lord Keeper can issue out any Commission of Delegates, notwithstanding the Statute of the 25 H. 8. Watf. Clerg. Law 56.

2. But it is to be observed that this Appeal to the King in Chancery, is only by the Statute aforesaid, upon a Suit in the Archbishop's Court, or in a Peculiar exempt; for if there be a Suit upon a Commission general of the King, there no Appeal may be to the King in Chancery, within the Statute of the 25th by the Words aforesaid; and therefore there may be * an Appeal to the King generally, as he is the Supreme Head of all Ecclesiastical Jurisdiction within the Realm; and this ought to be upon a Bill signed by him, before the Chancellor may make the Commission of Delegates to hear it. But upon Appeals upon the Statute, the Chancellor may grant the Commission of himself of Course, without any Bill signed. 5 C. 6. Stephen Gardiner was deprived upon a Commission of Delegates, and he appealed to the King generally, and not to the King in Chancery, and thereupon the Sentence repealed. 1 Mar. as I have heard by Report of Mr. Selden; and so was it done in the Lord *Hartford's Case* about the 1 Jac.

Williams J. held, That the Court of Delegates

3. The Delegates may excommunicate. D. 10. Ja. B. [Said] Per Cook to be resolved by all the Justices in the Archbishop of Canterbury's Case.

cannot pronounce a Sentence of Excommunication; and said that they had lately adjudged that Point against the Court of Delegates. 2 Bullst. 4. Mich. 10 Jac. B. R. in Case of Stevenson v. Wood——but Wood's Inst 505. says, That if the Delegates in Ecclesiastical Causes are *Spiritual Persons*, they may proceed to Excommunication; if they are all *Laymen*, the Fault is not in the Law, but in the Nomination.

The Power of the Judges Delegates is *Potestas delegata corrigere, non exequi*; they have Power there to examine, but not to correct. Per Williams J. 2 Bullst. 4. in Case of Stevenson v. Wood.

Tho' the Court of

4. They may commit Administration. Hil. 10 Ja.

Delegates may revoke or confirm an Administration, yet it still remains a *Quere*, whether they may grant it originally; and in the first Instance this was a Point stated in the Case of * *Stevenson v. Wood*. 10 Jac. 1. and the better Opinion was, that they could not. Watf. Clerg. Law 58——* 2 C. 2 Bullst. 4. accordingly; but the Doctors of the Civil Law differing in Opinion among themselves, the Court pronounced no absolute Judgment, but it was adjourned, and not spoken to again. But Williams J. cited one *Brackenbury's Case*, where it was adjudged, That they could not grant Letters of Administration, they having no Power so to do.

In a Prohibition the Case was; A. died Intestate. B. his Brother gets Administration in the Inferior Diocess; M. who pretended to be Wife of A. suggested *Bona Notabilia*, and procured a Prerogative Administration; B. appealed to the Delegates, and died; C. his Son and Heir gets the Prerogative Administration repealed, and Administration granted to himself. M. prayed a Prohibition, supposing that by the Death of one of the Parties the Commission was determined; but the Court were of Opinion against the Prohibition, and that the Delegates Authority to proceed in that Case continued notwithstanding B.'s Death; for by the Words of their Commission, the Ecclesiastical Laws to be their Rule, and by that Law a Suit does not abate by the Death of the Parties. And Hale said, The Appeal is to the King in Chancery, and is by Reason of his Original Jurisdiction, and thereupon he grants a Commission to hear it; now if he could hear it in Person, he may certainly determine the Cause after the Death of the Parties, and consequently they to whom he has delegated his Authority, may do the same. But upon the Attorney General's desiring to be heard, the Court gave further Time. Vent. 133. Trin. 23 Car. 2. B. R. *Pollexfen v. Pollexfen*.—2 Lev. 6. Pasch. 23 Car. 2. B. R. says, the Prohibition was denied.—2 Keb. 779. S. C. and that the Prohibition was discharged Nisi.

It was the better Opinion, and in a Manner agreed that B. R. may prohibit the Delegates from *Committing Administration*. 1st. Because the Authority of the Delegates is given by 25 H. 8. and so their Jurisdiction does not commence by Spiritual Law; but as the Pope had an usurped Power, which is transferr'd to the King by Parliament, and the King gives it to the Commissioners Delegates. And 2dly. Because they cannot be Judges in their own Cause. Lat. 86. in Case of *Reeve v. Denny*.

5. A Sentence in the Spiritual Court at L. was had against the Plaintiff, who afterwards appealed to the Arches, where the Sentence was affirm'd, and adjudg'd, ut supra, against the Plaintiff. Whereupon he sued a Commission to the Delegates, and the Matter was re-examined, and Sentence then given for the Plaintiff. Thereupon another Commission was sued out to re-examine this Matter. A Prohibition was prayed to stay it, because the 25 H. 8. enacts, that a Sentence before the Delegates shall be final, and consequently this second Commission is not well awarded. But it was answered, That the Queen hath by Law an Absolute Power to grant Commissions to Re-examine, which is not restrained by the 25 H. 8. And that it hath been so rul'd before these Times; and of that Opinion was Popham; but because it was a new Case, they would advise thereof. Cro. E. 571. Trin. 39 Eliz. B. R. *Gervis v. Hallewell*.

Mo 462. pl
652. S C
by Name of
Hildesell
v. Jervout,
Gvs, the
Court con-
ferr'd with
all the
Justices of
England,
and that
Popham in-
clin'd that
the Prohibi-
tion was not
grantable,
because the

Pope used to review in such Cases after Sentence by the Legate; and whatever the Pope was wont to do is united to the Crown by the Statute 25 H. 8. cap 20. [19.] But they agreed that this Review should be final without further Appeal. Fenner seem'd e contra, and that the Pope's Authority is abrogated and extinct and that no Appeal is given by the Statute any further than to the Delegates; and therefore it could not be lawful to go any further. But at another Day, by a Conference with all the Justices, they agreed that the Commission was well granted, and that Consultation should be awarded; but that if the Commissioners do not proceed to the Examination according to the Common Law, they shall be restrained by Prohibition.

6. The Delegates cannot make a Division of Intestates Goods. Per Hubbard. Noy 24. in *Took's Case*.

7. The Delegates cannot interpret a Statute. Per Hubbard. Noy 24. in *Took's Case*.

8. The Court of Delegates have no Power to prove Wills; Per Williams J. 2 Buls. 4. Mich. 10 Jac. B. R. in *Case of Stevenson v. Wood*.

9. The Judges Delegates must judge according to the Ecclesiastical Law. Per Ld. Keeper. Chan. Cases 201. Patch. 23 Car. 2. in *Case of Vanbrough v. Cock*.

10. The Judges and Civilians ruled on Debate, that the Testimony of one N. who was examined in Chancery between the same Parties, and Cross-examined there, should be read before the Delegates; though it was objected, that the Appellant here should take the Advantage here which he should have had if he had been Cross-examined; For Cross-examining a Witness sets him Upright in Chancery but not here. 2 Chan. Cases 250. Hill. 30 & 31 Car. 2. *Gargrave alias Fan v.*—[So the Book is.]

11. The *Reformatio Legum*, speaking of the Appeal to the King, adds as follow, *Quo cum fuerit Causa devoluta, cum vel Concilio Provinciali de- finiri volumus, si gravis sit Causa, vel a tribus Episcopis a nobis ad id Con- stituendis.* But in modern Practice (viz. only from the Year 1639) there are Temporal Judges and Temporal Lords appointed for the final Determination of Matters confessedly Spiritual. Gibf. Cod. pag. 1082. — The same Author says, That there are no Footsteps of any of the Nobility, or Common Law Judges in Commission till the Year 1604, (i. e. for 70 Years after the erecting the said Court) nor from 1604 are they found in above one Commission in forty till the Year 1639; From whence, (i. e. from the Downfall of Bishops and their Jurisdiction which ensued,) we may date the present Rule of Mixtures in that Court. Ibid. *Introductio*, pag. 21.

Wart. Clerg.
Law. 56.
says, this is a
great Error;
and that the
Practice has
been all a-
long to have
Lay Judges
joined in the
Commission
with Eccle-
siasticks.

12. There lies no Appeal to the House of Lords from a Sentence in the Delegates; For they cannot have any original Jurisdiction; because it is a Matter grounded upon an Act of Parliament, and the Act gives them none; Per Lds. Commissioners. 2 Vern. 118. Mich. 1689. *Saul v. Wilfon*.

13. A Woman was supposed to be Married first to A. and afterwards to B. Both A. and B. being then living; and upon a Dispute, the Spiritual Court affirmed the first Marriage, but was disallowed on Appeal to the Delegates, and the 2d held good; There was Issue by the 2d. but none by the first. Upon a Petition for a Commission of Review to re-
verse

verse the last Sentence, *Ld. C. King* said, That a *Commission of Review* is not a *Matter of Right* but purely in the Discretion of the Crown, and as such Commission tends to Baitardize the Issue he was against it, and should advise the Crown accordingly. 2 *Wms's. Rep.* 299. *Trin.* 1725. *Franklyn's Case.*

(H. f) Appeals.

An Appeal did not lie from the High Commission Court when

in Being; because they themselves were the King's Delegates, as acting by an immediate Commission from him. And there was no Remedy against their Sentences, but a new Commission to others, grantable by Virtue of the Royal Prerogative independant on the Authority given by 25 H. 8. or any other Statute. *Watf. Clerg. Law.* 55, 56.

1. If a Sentence be given in the High Commission Court, no Appeal lies from it *de Hero Jure.* *M.* 5 *Jac.* B. *M.* 8 *Jac.* B.

2. But upon such Sentence an Appeal may be, if the Party can acquire a special Commission to examine it. *M.* 5. *Jac.* B.

3. H. 2. ordained, that Appeals should be from the Consistory to the Arch-deacon; from him to the Bishop; from him to the Archbishop; from him to the King. *For.* 265. *Speed* 458.

4. But Matthew Paris has further, that the King commanded the Archbishop to make an End of the Suit, and that he proceed no further without Licence of the King. *Speed.* 458. *Jan. Anglor.* 94. 53.

5. In Roger Hobend. fol. 303. and *Jan. Anglor.* 94. it is, that Appeal shall be from the Archdeacon to the Bishop commencing with the Archdeacon without speaking of the Consistory, and so Cook in his 6. Epistle cites it, and there he observes the Power of the King upon Ecclesiastical Jurisdiction to be ancient and not new.

6. Among the Petitions in Parliament 18 E. 1. there is such Petition, William de Nottingham Clericus petit, quod possit protequi Appellationem suam in Curia Romana &c. Rex non concessit, quod Privilegium suum infringat, sed impetret intra Regnum, si sibi videret expedire.

7. 24 H. 8. cap. 12. S. 5. Enacts, that Appeals in Causes Testamentary, Causes of Matrimony and Divorces, Right of Tithes, Oblations and Obventions, shall be sued from the Archdeacon or his Official, if the Matter be there commenced, to the Bishop of the Diocese.

A Parson of a Church in the Diocese of Winton was depriv-

ed, and he appealed to the Archbishop of C. in Curia Prærogativa sua de Arcubus: the Question was, Whether this Appeal was well brought? because the Statute mentions only the Archbishop of the Province where &c. without limiting any Court in certain. It was the Opinion of all the Justices of B. R. that the said Words in the Appeal, viz. (In Curia Prærogativa sua de Arcubus) were void and superfluous, and that the Words, viz. (to the Archbishop of C.) were sufficient to have the Benefit of the Appeal by the Equity and Intendment of this Statute. *D.* 240, pl. 46. *Trin.* 7 *Eliz.* Anon.

In Trin. 3 W 3. the Court agreed, that no Appeal could be

made from the Dean of the Arches to the Archbishop, because it was one and the same. *Carth.* 170. in *Lee's Case.*—But *Ibid.* in *Marg.* the Reporter says, that the Statute 24 H. 8. 12. is expressly to the contrary, but that this Statute was not mentioned.

S. 7. If the Matter be commenced before the Archdeacon of any Archbishop, or his Commissary, the Appeal may be within 15 Days &c. to the Audience or Arches of the said Archbishop, and from thence within other 15 Days &c. to the Archbishop himself, and no further.

S. 8. *And if the Case be commenced before the Archbishop, then to be there definitively determined without further Appeal.*

S. 9. *Where the Matter touches the King, the Appeal may be within 15 Days to the Higher Convocation House of that Province, and no further, but finally to be there determined.*

8. G. was installed *Dean of Wells*, and afterwards made a *Prelendary* S.C. cited Dav. 46. b. in Case of the Dean and Chapter of Fernes. he was *deprived of his Deanry by the Bishop's Commissary*, because he could not hold two Dignities simul & semel in the same Church, and the first was void by the Canon Law. The Dean *appealed to the Archbishop*, who affirmed the Sentence. Whereupon he *appealed to the King*; but the King granted the Deanry to one *Turner*; after which the King died. Queen Mary granted another Commission to the *Delegates*, who *restored him* to his Deanry. After the Death of Queen Mary (viz.) Anno 1 Eliz. *Turner by a new Commission was restored by Sentence*, and that Sentence after affirmed by other Commissioners, notwithstanding the Reclaimers and Appeal of G. Dyer 273. pl. 35. Pasch. 10 Eliz. Walrond v. Pollard.

10. Stephen Gardiner, Bishop of Winchester, was *deprived at Lambeth by Commission* from E. 6. made to 10 Persons proceeding thereupon Ex Officio mero, mixto vel Promoto, *omni Appellatione remota*, Summarie de Plano, without any Form or Figure of Judgment, but only upon an Inquiry into the Truth of the Fact. 4 Init. 340. cites a MS. Rep. of Ld. Dyers.

10. An Appeal being a natural Defence *cannot be taken away by any Prince or Power*; and in every Case generally, when Sentence is given and Appeal made to the Superior, the Judge, that did give the Sentence, is bound to obey the Appeal, and to proceed no further until the Superior hath examined and determined the Cause of Appeal; nevertheless, where this Clause (*Appellatione remota*) is in the Commission, the Judge, that gave Sentence, is not bound to obey the Appeal, but may execute his Sentence and proceed further, until the Appeal be received by the Superior, and an Inhibition be sent unto him; for the Clause (*Appellatione remota*) hath three notable Effects; 1st, That the Jurisdiction of the Judge that gave Sentence is not by the Appeal suspended or stopped; for he may proceed, the same notwithstanding. 2dly, That for Proceeding to Execution or further Process he is not punishable. 3dly, That those Things that are done by the said Judge after such Appeal cannot be said void; for they cannot be reversed Per viam Nullitatis. But if the Appeal be just and lawful, the superior Judge ought of Right and Equity to receive and admit the same, as he ought to do Justice to the Subjects; and so if the Cause of the Appeal be just and lawful, he ought to reverse and revoke all mean Acts done after the Appeal in Prejudice of the Appellant. Thus far the Report of the Lord Dier truly Translated. 4 Init. 340. cap. 74.

(I. f) The Effect of Appeal.

See (H. f)

1. **I**f after Sentence the Party appeals the Sentence is utterly suspended during the Appeal. 2 R. 2. Quare Impedit. 143.

The very bringing an Appeal is a

Suspension of the first Judgment in the Spiritual Court for the principal Matter, but not for the Costs; Per Lord Keeper Egerton. Goldsb. 119. pl. 4. Hill. 43 Eliz. in the Case of Willoughby v Willoughby.

2. **I**f a Man appeals from a Sentence of Excommunication he may celebrate Mass. 20 D. 6. 25. h.

S f f

3. Se

3. So after Appeal he may bring Actions at Common Law, and ought to be answered. Dub. 20 D. 6. 25.

4. If an inferior Spiritual Court commits Administration, and an Appeal is made from thence to the Arches and there the first Administration is affirmed, the Use is to remit the Cause; but when the first Sentence is reversed the first Court shall be ousted of Jurisdiction, and the Court that reverses it &c. shall commit de Novo. Lat. 85. Reeve v. Denny.

5. If a Church be only voidable by Deprivation, and the Ecclesiastical Judge hath actually pronounced a Sentence of Deprivation against the Incumbent, yet if the Person deprived appeals, the Church is not actually void so long as the Appeal dependeth; And if the Sentence of Deprivation upon the Appeal be declared void, the Clerk is perfect Incumbent as before, without any new Institution. Watf. Comp. Inc. 8vo. 95. cap. 6. cites Fitzherb. Abr. 2 R. 2. Quare Impedit. 143. 27 H. 7. Gard. 118. Trin. 7 Eliz. Dyer. f. 240. and Mich. 33 & 34 Eliz. Gayton's Case. Owen 12. Packman's Case. 6 Co. 18.

6. If the Appeal be to the King in Chancery, and the Deprivation be affirmed by the King's Delegates, or if the Deprivation be immediately made by the Lord Chancellor, or Keeper, for that the Incumbent is visitable immediately by the King, I conceive that no Appeal lies, and that the only Remedy, that the Person deprived hath, is to get a Commission of Review, which is only grantable of Grace by the King, and not of Right; nor is there any Remedy at Common Law if the Cause of the Deprivation was Ecclesiastical; for there the Sentence is binding, and not thereby examinable; and therefore, if a Person be deprived by the Authority aforesaid, and another be instituted to his Benefice, the new Incumbent's Title stands good 'till it be reversed upon the Commission of Review; for this was said in the Case of a Clerk deprived by the High Commissioners. Watf. Comp. Inc. 8vo. 95. cites Trin. 4 Jac. Bird v. Smith. Moor 781.

See Commendam.

(K. f) Prerogative of the King in Matters Ecclesiastical.

Cro. E. 542. 1. **T**HE King by his Prerogative Royal may grant Licence to S. C. where an Incumbent to hold his Benefice in Commendam with a Bishoprick. D. 39. El. B. R. Armiger and Holland.
it is held by Gaudy and Fenner, that the King had this Prerogative by the Common Law; for the Benefice is made void by the King's Act, and he may well dispense with his own Act.

* Fol. 234

2. 9 E. 1. Rot. Claus. M. 4. Dorf. Rex Episcopo Cistr. &c. Cum nos & Progenitores nostri hoc Privilegio usi sumus a Tempore quo non extat Memoria quod Clerici nostri ad ordines suscipiendos vel ad faciend. super suis Beneficiis personalem Residentiam dum nostris immortalantur * obsequiis compelli non debeant Mandamus vobis quod W. Clericum nostrum &c.

3. D. 8. E. 3. B. R. Rot. 23. The Archbishop of York summoned per breve de Ven. fac. ad respondend. Domino Regi pro Consécratione Epif. Durham elected a Bishop without the Assent of the King; the Defendant comes and says, that he is a Peer of the Realm, and ought not to be compell'd to answer by Attachment and Distress &c. To which it is answered, Quod Contemptus, Excessus & Transgressio prædicta tangunt Usurpationem Juris Regii Contra Coronam per quod Prædictum Breve de Venire fac. fuit invent. per Concilium Regis, quia in Novo casu Novum Remedium est Apponendum, dies datus ad Audiend. Judicium.

4. The Kings of England from Time to Time in every Age before the Time of H. 8. have used to grant *Dispensations in Causes Ecclesiastical*; for where the Law of the Church is, that every Spiritual Person is visitable by the Ordinary, King William the Conqueror by his Charter exempted the Abbot of Battel from Visitation and Jurisdiction of the Ordinary in those express Words (*Sitque dicta Ecclesia libera et Quicta in perpetuum ab omni Subjectione Episcoporum et quarumlibet Personarum Dominatione*, sicut Ecclesia Christi Cantuariensis &c.) by which he dispensed with the Law of the Church in this Case. Dav. Rep. 72. b. 73. a. Pasch. 9 Jac. C. B. in Ireland, in the Case of Commenda.

5. The King may dispense with a Priest to Hold two Benefices, and with a Bastard that he shall be a Priest, notwithstanding the Ecclesiastical Laws which are to the contrary; and as he may dispense with those Laws, so he may Pardon all Offences against them. Dav. Rep. 73. a. Pasch. 9 Jac. C. B. in Ireland, in the Case of Commenda.

6. The Ecclesiastical Court cannot proceed to punish a Person for a Crime, according to the Canons, for which he is pardoned, or at Common Law excused. Arg. Skin. 500. Trin. 6 W. & M. B. R. in the Case of Philips and Bury.

(L. f) Prerogative of the King in Ecclesiastical Courts, by Writs of the King.

1. **I**F Parishioners of a Parish have used Time out of Mind to elect two Churchwardens Annually, and to present them to the Archdeacon to be sworn, and he has used to swear them, and now upon such Election and Presentation to him to be sworn, he refuseth to swear them, a Writ may be directed out of B. R. to the Archdeacon commanding him to swear them. M. 17 Jac. B. R. Such Writ granted for the Churchwarden of *Sutton-Valence* in Kent. For tho' a Canon be made 1 Jac. to the contrary, it cannot take away the Custom. T. 15 Car. B. R. Such Writ granted for the Churchwardens of the Parishes of * *Ethelborough* and *St. Thomas Apostle's* in London, after diverse Motions and upon hearing of Counsel on both Sides. D. 4 Car. B. R. Rot. 420. || *Draper and Stone*, like Writ granted. --- For the Churchwardens of † *Holbeton* in Devon, like Writ granted.

|| Prohibition. F. pl. 51. S. C. --- † Mar. 66. pl. 104. Mich. 15 Car. S. C. and cites the Cases of *Sutton-Valence* in Kent, and of *St. Ethelborough* in London. -- S. P. Raym. 429. Pasch. 22 Car. 2. *Canterbury*. Case. --- If the Party elected offers himself, and the Ecclesiastical Judge refuses to tender the Oath to him, a *Mandamus* from the Temporal Court will be granted, and will not be revoked upon a Return that he is not *Habitis Persona*; because they say, that in this the Ecclesiastical Court are not to judge of the Qualifications of the Person any more than of an Executor or an Administrator; but the Parishioners who chuse him are the most proper Judges of his fitness for the Office. And it must be own'd, with regard to the Goods of the Church, that the Parishioners who are to repair what is lost or spoil'd, ought to be Judges in what Hands they shall be lodg'd, because they may well be presum'd to chuse such Hands as are wise. But with regard to the Duty of preserving Order, and preventing Vice, the Presumption does not hold so strong that the Parishioners will always chuse such as shall be zealous in that Work, which yet is a very considerable Branch of the Office of Churchwarden. Gibb. Cod. 243.

2. 36 E. 3. The King commanded the Bishop of Exon to send Chrisme to the Parish of *St. Burien* in Cornwall.

3. F. N. B. 63. A Writ de Cautione admittenda directed to the Ordinary.

4. F. N. B. 200. A Writ directed to the Mayor of Oxford to inrol a Testament and to prove it.

5. If a Clerk of a Parish in London has been used Time out of Mind to be elected by the Vestry, and after admitted and sworn before the Archdeacon, and he refuses to swear such Clerk so elected, but admits another elected by the Parson, a Writ may be awarded to him, commanding to swear him. 22 Jac. B. R. *Walpole's Case*. Mich. 16 Car. B. R. between * *Orme and Pemberton*, for the Clerk of the Parish of St. Foster's London such Writ granted.

* Cro. E.
589 S. C.

For more of Prerogative in General, See Aid of the King, Canons, Commendams, Presentation, and other proper Titles.

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* Prescription.

* Prescription is from Time whereof the Memory of Men living &c. and this holds if there be no special Evidence by Record to the contrary. Jenk. 20. in pl. 49.

(A) [*Who*. And] by what Names they may prescribe, [though they hold only at Will &c.]

1. † A Serjeant at Law may prescribe, that he and all Serjeants have used &c. to be impleaded only by Original. 11 E. 4. 2. b. though they are not a Corporation.

† Bill of Debt against a Serjeant at Law, who said, That he came to the Bar to plead and minister Matter for his Client, and Bill does not lie against him; and after he said, that he is Serjeant at Law, and that he and all Serjeants at Law Time out of Mind have been impleaded by Writ original, and not by Bill; And demanded Judgment if the Court will take Consuance. The Plaintiff demurred. Per Brian, You cannot prescribe; for you are not incorporated. But it was held, that several may prescribe, who are not incorporated, as Officer of the Court shall prescribe in Privilege &c. Br. Prescription, pl. 72. cites 11 E. 4. 2.

Br. Prescription, pl. 72. cites S. C. 2. So an Attorney may prescribe, that he and all Attorneys &c. have used to have Privilege &c. 11 E. 4. 2.

3. A Man may prescribe, that all the Inhabitants of the Parish have used to have their Sacraments, and to be buried in the Church-yard &c. 18 E. 4. 2. b.

the Defendant said, That the Place &c. is &c. and that the City of Coventry is an ancient City Time out of Mind, and all the Citizens and Inhabitants of the same City have had Common in the said Place for all their Beasts Levant and Couchant in the same City Time out of Mind from such a Day to such a Day, and that the Defendant is an Inhabitant in the same City, by which he put in his Beasts as in his Common; And it was agreed, that the Mayor and Citizens of C. may prescribe for them and their Inhabitants &c. and not otherwise. Br. Prescription pl. 28. cites 15 E. 4. 29. — S. P. Br. Customs, pl. 40. cites 18 E. 4. 3. — So Prescription may be, that the Usage of the Vill of D. has been Time out of Mind, that the Inhabitants &c. have had * Way over the Land of the Plaintiff to the Church &c. or that they have been quit of Toll at the Mill &c. Br. Prescription, pl. 76. cites 18 E. 4. 3. — S. C. cited D. 71. pl. 72. — * S. P. and that Inhabitants may prescribe in Easement, contra in Profit Appreder out of another's Land; Per Pigot, which was not contradicted. Br. Prescription, pl. 28. cites 15 E. 4. 29. — Inhabitants, unless they are incorporated, cannot prescribe to have Profit in the Soil of another, but in Matters of Easement only, as in a Way to a Church; So in Matters of Discharge; As to be discharged of Toll or Tithes, or in a † Modus decimandi; But not in Matters of Interest. Cro. J. 152. Hill 4 Jac. B. R. Smith v. Gatewood. — 6 Rep. 59. b. S. C. — S. C. cited Arg. 2 Lutw. 1346. in Case of Johnson v. Wyard. — S. C. cited 3 Buls. 326. in Case of Turner v. Denning. — † S. P. Cro. E. 440 Mich. 37 & 38 Eliz. C. B. in Case of Austye v. Fawkener.

Brooke makes a Quære, if Householdiers may prescribe. Br. Prescription, pl. 98 cites 11 H. 6. 10.

4. A Man may allege a Custom Quod quilibet Capitalis Justiciarius de Banco pro tempore existens has used Dare quodlibet Officium of the Court &c. D. 2. 3. Ha. 114. 63.

S. P. Br. Prescription, pl. 4. cites 20 H. 6. 8.—S. P. Br.

Prescription, pl. 72. cites 11 E. 4. 2.

5. A Sheriff cannot prescribe, that he and all those who have been Sheriffs have been seised of a certain Gilt at every Tourn held &c. For Sheriff is chose by the King every Year, and removeable at the King's Will. 42 E. 3. 5. adjudged.

Br. Office and Officer, pl. 31. cites 42 E. 3. 4.—Br. Prescription, pl.

9. cites 40 E. 3. 4. [but it should be 42 E. 3. 4. according to Br. Office.]

6. But Vide in 21 D. 7. 16. b. An Under-Sheriff prescribed, that he and all under-Sheriffs of the County have used to have to much for Barr Fees, and admitted good.

See Fees (A) pl. 1. in the Notes. Br. Fees, pl. 6. cites S. C.

—Br. Prescription, pl. 37. cites S. C.

7. Scire facias to repeal Letters Patents of the King of an Office in Ireland against J. N. because the Plaintiff has other Letters Patents of it of elder Date, &c. the Defendant said, That the Land of Ireland is, and Time out of Mind, has been a Land severed from the Realm of England, and ruled and governed by the Customs and Laws there, and that the Lords there of the King's Council have used in the Absence of the King to chuse a Justice, who has Power to pardon and punish all Felonies and Trespasses, and to assemble a Parliament by Advice of the Lords and Commonalty, and make Statutes, and alleged how a Parliament was summoned, by which it was enacted, that those who have Offices there shall be resident upon it by a Day &c. or otherwise shall forfeit his Office, and that the Plaintiff was Officer &c. and did not come by the Day, by which the Office was void, and the King granted to the Defendant &c. The other demurred upon the Plea, and by some the Prescription is contrary to Reason, and * may bind the King, and therefore ill; But per Fortescue, the Prescription is void, and is in the King, and not in those of Ireland; as † Chancellor of England who is only at Will prescribes to have Presentation to all Benefices of the King || under a certain Sum, and that Statutes of England, as of 10ths, 15ths &c. do not bind Ireland, because it is severed, and does not come to Parliament; therefore Quære Legem. Br. Prescription, pl. 4. cites 20 H. 6. 8.

* Orig. is (Poet lier) † S. P. Br. Prescription, pl. 2. cites 11 E. 4. 2. || S. P. under 20 Marks per Annum when they void; Quod Nota; But it is used that he may make Collation or Presentation to all which are under 20 l. per Annum. Br. Prescription, pl. 86. cites 38 E. 3. 3.

8. In Debt it was awarded, that the Sexton of an Abbey cannot prescribe that he and his Predecessors, Sextons of the Abbey of B. have been Parsons of St. A. in B. and have impleaded and been impleaded Time out of Mind; For Sexton cannot prescribe; and grant to him by the King shall not serve to his Successor; for he has no Succession, quære of himself; For it seems that he is a Monk, and therefore a dead Person in Law. Br. Prescription, pl. 99. cites 32 H. 6. 31.

9. Prior datave and removeable prescribed to implead and to be impleaded, and to answer, and to be answered Time out of Mind, and a good Prescription. Br. Prescription, pl. 94. cites 2 E. 4. 17. and 44 E. 3. 4. accordingly.

10. My very Tenant may prescribe in his own Right; per Choke; Br. Prescription, pl. 28. cites 15 E. 4. 29.

And so may Tenant for Years; Per

Choke; Quod fuit Concessum. Ibid.—But Tenants at Will cannot prescribe in their own Rights, but in Right of their Lord; Per Cur. Br. Prescription, pl. 76. cites 18 E. 4. 3.—S. P. per Choke. Br. Prescription, pl. 28. cites 15 E. 4. 29.—They cannot prescribe in a Thing which shall endure for ever &c. but in the Usage and Custom of the Vill they may; and to note the Diversity Br. Prescription, pl. 76. cites 18 E. 4. 3.—Tenant for Life cannot prescribe, nor a Man cannot prescribe against Tenant for Life, and where there is no Succession nor Perpetuity there can be no Prescription. Br. Prescription, pl. 77. cites 22 E. 4. 17.

Cro. E. 153.
Honeywood
v. Husbands.
S. C. reports,
That Gaw-
dy held it to
be good ;
But per
Wray, the
Plaintiff
ought to
have made a

11. In Case for disturbing the Plaintiff in using his Common Plaintiff set forth, that A. was seised of certain Lands to which Common was appendant for Life, Remainder in Tail to B. and that they demised the Lands to the Plaintiff for Years ; It was objected against this Declaration, that *Lessee for Life, and he in Remainder cannot prescribe together*, and cited 20 E. 4. 10. But per Popham and Gawdy, it is well enough ; For all is but one Estate. 1 Leon. 177. Pasch. 31 El. B.R. Hauxwood v. Husbands.

distinct Title to the Common, and not confounded them as he has done. Et adjournatur.

12. A Copyholder prescribed, that every Copyholder of such a Parcel of Wood had used to cut down Trees there growing ; and held good ; and a Difference was taken between a Prescription for Freehold and for Copyhold Land ; for Custom which concerns Freehold ought to be throughout the County, and cannot be in a particular Place ; But a Prescription concerning Copyhold Land is good in a particular Place ; for De Minimis non curat Lex, and the Law is not altered thereby, and it may be there is but one Copyholder there for which he might prescribe. And Custom to have Profit Apprender, Privilege or Discharge, may well be in a Particular. Cro. E. 353. Mich. 36 & 37 Eliz. C. B. Taverner v. Ld. Cromwell.

It is true,
That Ten-
ants in An-
tentDemesne
may join in a
Claim for a
Common
&c. because

13. The Inhabitants of Egham, and all the Towns in Surry, joined in a Claim to cut down all the Coppices at their Pleasure, and to have Common for all Cattle Commonable, and Common of Turbary, and made Title by Prescription. Noy, the Attorney General said, That they ought not to have joined in One Claim. Jo. 275, 276. 8 Car. in Itin. Windsor, The Inhabitants of Egham's Case.

King cannot claim for them ; But [as to] other Men, if [they are] Copyholders, they only must join that are Tenants to one Lord, and the Lord must prescribe for him and his Tenants ; But the Lord of a Manor cannot prescribe for any of his Freeholders, but every of them must put in several Claims ; For the Reason why the Lord may prescribe for his Copyholders, is, because the Freehold of the Land is in Law in him. Jo 276. in the S C.

14. Prescription for a Thing Appurtenant to a Manor (as Liberty of Foldage of the Tenant's Sheep) was laid in a Body Aggregate by a Que Estate, and was held to be well enough. 2 Vent. 139. Hill. 1 W. & M. C. B. Dickman v. Allen ---- cites Keilw. 140 b. Co. Litt. 121. a. Cro. J. 673.

15. In Trespass of breaking his Close called Jennings's Key, the Defendant prescribed, that *Omnes ligei Domini Regis*, Time out of Mind &c. used to land Goods of too great Burden in the Lands adjoining ; The Plaintiff had Verdict ; But upon Exception in Arrest of Judgment, the Court held the Prescription good enough, and a Nil Capital was awarded. 3 Keb. 179. Trin. 25 Car. 2 B. R. Jennings v. Clenial.

(A. 2) Against whom.

1. **T**HE Lord cannot prescribe against his Villeins, nor his Tenant at Will. Br. Customs. pl. 52. cites 13. E. 3.

2. A Man prescribed in the Bishop of C. and his Predecessors, that they had presented to such a Priory, as Patrons, Time out of Mind ; Skipe said he cannot prescribe against the King ; But Kirk said that he may as well against the King as another Person ; For otherwise the Lords shall lose their Franchise in Quo Warranto. Br. Prescription pl. 52. cites 38. Aff. 22.

3. Debt

3. Debt of 3 l. for Pound Breach, because the Custom of his Manor of C. is that the Lord for the Time being has had 3 l. for Pound Breach Time out of Mind, and that the Defendant was Distrained, and shewed by whom, and for what Cause, and he broke the Pound, for which he brought his Action; and by all the Justices the Custom is not good to bind a Stranger; For it cannot have Lawful Commencement, But such Custom upon the Tenants of the Manor may be good; For it may be that it was reserved upon their Tenures in Principio. Br. Prescription pl. 106. cites 11 H. 7. 13, 14.

4. As where the Tenants grant to the Lord, that when their Rents are Arrear, they shall render 20 s. Ibid.

5. In Replevin, the Defendant avowed for Damage-tenant; The Plaintiff justifies, For that he had a Close adjoining to the Defendant's Close, And that the Defendant, and all the Occupiers of the said Close, Time out of Mind, had used to repair the Fences between the said Closes, and for not sufficient inclosing his Beasts entered &c. Issue was taken upon the Prescription, and found for the Avowant; It was moved in Arrest of Judgment, that the Prescription, That every Occupier &c. is too general, for Tenant at Will, Tenant at Sufferance, or a Disseisor are Occupiers, and for this Reason it was held, That the Prescription of was not good, though being after a Verdict, it is aided by the Statute. Jeofails. Cro. E. 445. Mich. 37 & 38 El. C. B. Austye v. Fawkenor.

S. in an Action on the Case, the Plaintiff set forth, That he has been 3 Years lost pay an Occupier of such a Pasture, and that Defendant occupied such another Close, and that Omnes

alii Occupatores of the Defendant's Close did use to shut the Gates; This was found for the Plaintiff, and it was moved in Arrest of Judgment, That Omnes Occupatores is not good; But it was adjudged, that notwithstanding this Exception, without alledging any [thing more] than that all the Occupiers had used to do it, it was good. Cited by Bridgman Ch. J. Cart. 32. Mich. 17. Car. 2. C. B. as the Case of Gunter v. Mori, and that it was by the Advice of all the Judges.

(B) Of what Thing it may be. [And what shall be said a good Prescription.]

1. **A** Man may prescribe to be Tenant in Common with another of Land. 8. H. 6. 16. b. Br. Prescription, pl. 19. cites S. C.

As if one and his Ancestors, or those whose Estate he has in a Moiety have held the same in common with the other Tenant or his Ancestors, or with those whose Estate he has Pro-Indiviso Time out of Mind &c. But Joint Tenants cannot be by Prescription; Because there is Survivor between them, which there is not between Tenants in Common. Co. Litt. S. 310. 195. b.

2. **But a Man cannot make Title to Land by Prescription.** Brooke He cannot make Title to the Land

itself [as] that he and his Ancestors, or those whose Estate &c. have been seised Time out of Mind &c. Br. Prescription. pl. 19. cites 8 H. 6. 16. and cites Tit. Trespass. pl. 122 — [* There are not so many Pleas in Prescription, but it seems it should be (pl. 19) and that the (122) is a Mistake occasioned by the Plea out of (Trespass 122) which Brooke cites.

3. It seems, That a Dean and Chapter may prescribe to make Indulgence and Installation, as to them belonging, Time out of Mind. Vide 9 H. 4. 9. a. b. The Bishop of Coventry and Litchfield v. Westwood.

4. Master of an Hospital prescribed in Writ of Annuity of the Seign of the Annuity against a Parson and his Predecessors, Time out of Mind, and good, and so charged the Parson, and no Land but the Church. Nota. Br. Prescription, pl. 21. cites 19. H. 6. 39. Br. Aid. pl. 18. cites S. C.

5. Where Rent is granted by Fine or Patent of the King before the Time of Memory, the Party may Count by Prescription. Per Newton. Br. Prescription, pl. 22. cites 19 H. 6. 75.

6. It is a good Custom to Prescribe That where a Swan comes up n the Land of any adjoining to the River Thames, and makes a Nest there, and has three Cygnets, that the Owner of the Swan shall have two of the best, and One may prescribe to have one of Swans within the

In Maner, the Owner of the Land the third; For otherwise the Owner of the Land as well as to may Chase them; quod nota; and here in a Particular County. Br. Prescription pl. 100. cites 2. R. 3. 15.

W. 1. 1. b.

T. 1. 34. 11. The Case of Swans.—And he that has such Game of Swans, may prescribe, *that his Swans find no action in the Manor of another*, Ibid. 16. b. 1. a.— And in that Case a Prescription being laid for Wild Swans unmarked, Nidificantes &c. it was resolved that if the Defendants had alledged, That within the said Creek there had been Time out of Mind a Game of wild Swans unmarked, Nidificantes &c. *Guerners*, and then prescribed that such Abbot and all his Predecessors &c. had used, Time out of Mind, to have and take to themselves some of the said Game of wild Swans and their Cygnets within the said Creek, this had been good; For though the Cygnets are Royal Volatiles, yet in such a Manner a Man may prescribe in them; Because this may have a lawful Commencement by Grant of the King, and consequently a Man may prescribe in them within a certain Place, since it may have a lawful Commencement. Ibid. 18. a. b.

S. in a Vill 7. It is a good Prescription to have a Halfpenny of every one who goes Toll through; over his Land; For this is Toll Traverse. Br. Prescription. pl. 57. cites For this is quid pro quo. 5 H. 7. 9. Ibid.

Br. Customs. 7. It is a good Prescription, That if the Tenants of the Manor do not pl. 30. cites pay their Rent by one Year, nor any Distress can be found there by one Year, 21 H. 7. 15 that the Lord may re-enter, and this is good for the Generality; For tho' 15 S. C. some do not pay, by which the Lord enters, yet it may be, that there are others who pay well. Br. Prescription pl. 36. cites 21. H. 7. 15.

And King- 9. Prescription by a Lord or a Manor was to have after the Death of every mill J. Tenant for Life or Years, or at the Will of the Lord, for every Tenure held thought this Case by such Tenant at the Time of his Death, his best Beast, in the Name of a Heriot, and to seize the same. Kingmill and Vavafor J. thought this Case of 14 not a good Prescription. But Frowike Ch. J. Contra. Keilw. 79. b. H. 4. fol. 2. Mich. 21 H. 7. Talbot's Case.

Record de Gloucester Fee, for there the Lord of the Honour shall have Relief, Heriot, and other casual Profits for every Alienation, and there Unity of Possession in the Lord shall not hurt the Custom, because the Custom runs to a Generality, that is, throughout the whole Honour; and where the Custom runs in such Generality throughout all and every Part of a Place, as Gavelkind, Borough English, and the like, in those Cases, Unity of Possession is not material; but in the Case above, the Custom cannot run in such Generality, and for this Reason the Prescription is not good. And also because every * Prescription ought to depend on a Thing which may have perpetual Continuance, whereas between Lessor and Lessee for Term of Life, or Years, or at Will, the Lessees have only an Estate determinable within a Time certain. Keilw. So 21. H. 7. Talbot's Case.—But Frowike Ch. J. held this a good Prescription, and distinguish'd between one single Lease of one single Part and several of several Parts; that tho' in the first Case on the Determination of such single Lease, an Interruption would be of such Prescription, because it refer'd only to that particular Parcel, but here, notwithstanding such Determination, there are other Lands in Lease, upon which the Custom may depend and take Place, it extending throughout the whole Manor, and so makes it square with the Case of Gloucester Fee cited by Kingmill J. Keilw. S. Talbot's Case.—Br. Prescription. pl. 36. cites 21 H. 7. 15. S. C.—Br. Customs pl. 30. cites S. C.—* It is an infallible Rule, that if a Man has a Thing of Common Right, and by Prescription, he has Estate in Fee Simple in the same Thing. Dav. 9. b.

In Replevin, the Defendant avow'd, that J. S. held of him by Homage, Fealty and Rent, and at every Alienation of his Tenant that he and his Ancestors have used to have the best Beast, if the Alienor does not give Notice to the Lord in the Life of the Alienor; and that his Tenant alien'd to the Plaintiff and died, and the Plaintiff did not give any Notice in the Life of the other. And the best Opinion was, that this is a good Prescription; for it may have lawful Commencement, as by Condition or Reservation at the Making of the Tenure. Br. Prescription. pl. 58. cites 8 H. 7. 10.

See (Y) pl. 27. 10. Prescription to disfrain in his own Land is good. Br. Prescription. S. Cat large. pl. 1. cites 26 H. 8. 5.

My Lord Ch. 11. Where a Man prescribes to go quit of Tithes for his Lands in D. J. Hobart where all others of D. pay Tithes, this is void; for Custom cannot be said, that in Particular, but ought to be throughout a Country or Vill. Br. Prescription. pl. 93. cites Doct. & Stud. lib. 2. cap. 55.

Tithes differ

from all other Cases in Law; For whereas Prescription and Antiquity of Time fortifies all other Titles, and supposes the best Beginning that Law can give them, yet in Case of Tithes it is clear contrary; for tho' the Grant of a Parson, Patron, and Ordinary, is good in itself without any Remittance or Consideration, yet when it runs to Prescription it dies and perishes, whereof no other Reason is given but that our Books say, that a Man may prescribe *In modo Decimandi*, but not in *Non Decimando*, and that *In faciem Ecclesie*, lest Laymen should spoil the Church. But he gives another Reason, That the Law violently presumes that a Layman cannot be discharged absolutely, and so will not allow the Prescription.

tion, but will prefer the Good of Religion and the Church to the Benefit of a private single Person. Hob. 297. Mich. 15 Jac. in the Case of Slade v. Drake.

12. A Man can't prescribe in *Things which touch the Crown*. Br. Lect. Stat. Limit. 39.

13. In Trespafs of taking his Goods, the Defendant set forth, That the City of York was an ancient City, and that there were Mayor, Bailiffs, and Citizens in the City Time out of Mind till 1 R. 2. who then incorporated them to be Mayor, Sheriffs, and Citizens; and that Time out of Mind there had been a Custom to seize Wares foreign bought and foreign sold within the Liberty of the City of York, as forfeited; and because the said Goods were Wares foreign bought and foreign sold, he, as Servant to the Mayor &c. justified the Taking. And this Manner of Prescription was travers'd and allow'd. D. 279. b. pl. 10. cites it as a Precedent. Bendl. 21. pl. 36. Patch. 28 H. 8 Rot. 351. Gaffon v Shittings ton; the Pleadings but nothing more D. 279. b Marg pl. 9. [but it is mis-plac'd, and should be pl. 10.] says, that Mr. Glanvill in his Reading, Feb. 5 Car. said, That he doubted of this Case; for he held, that the Prescription is ill, and says, that he had search'd for the Rule of this Case among the Records but could not find any such; and he grounded his Reason upon the Statute of 9 E. 3. cap. 1. for it is expressly contrary to this Case. — [That Statute does not concern the Manner of the Prescription, but only prevents such Forfeitures.]

14. A Body Politick or Incorporate may commence and be established by Prescription. Co. Litt. 250. a. S. 413.

15. In Action upon the Case the Plaintiff claim'd such a Custom in the Town of T. that he and his Ancestors had a Bakehouse within the Town to bake White and Household Bread, and that he had served all the Town with Bread, and that no other could use the Trade without his Licence, and that the Defendant had used the Trade without his Licence; upon which the Defendant demurr'd. And after Argument it was adjudg'd, that the Action will not lie. Ow. 67. Hill. 32 Eliz. B. R. Sir George Farmer v. Brook. Le. 142, 143. Trin. 31 Eliz. B. R. S. C. But it does not appear there, that any Judgment was given. — but Cro. E. 203. Mich.

32 & 33 Eliz. B. R. S. C. says, that it was adjudg'd for the Plaintiff; for the Custom is between the Lord and his Tenants, which by Indenture may have a good and lawful Beginning, and peradventure their Lands were given to them upon this Condition; and it is reasonable that the Lord maintaining a Bakehouse, that for this Cause they should have reasonable Recompence, and the Plaintiff had Judgment — S. C. cited 8 Rep. 125 b. Hill. 7 Jac. in the City of London's Case; and says, it was adjudg'd a reasonable Custom by Sir Christopher Wray & tot. Cur. and yet this Custom restrains a Man to use his Trade within a certain Place.

16. In Trespafs for entring and cutting down the Plaintiff's Wood, the Defendants alledge a Prescription &c. to take the Underwood growing on the Lands of the Plaintiff adjoining to their Land, to make the Hedges of that Land on which the Wood did grow. It was argued, that this Prescription is not good; because it sounds in Charge, and is not for the Benefit of him who prescribes; For if the Defendants did not repair the Wood, they would receive no Damage. Sed Adjournatur. 1 Leon. 313. Mich. 32 Eliz. B. R. Leigh v. Okeley.

17. One cannot have a Court by Prescription, unless where he cannot have it otherwise. Per Walmsley J. Cro. E. 792. Mich. 42 & 43 Eliz. C. B. in the Case of Pill v. Towers.

18. In Replevin &c. the Issue was upon a Prescription for every Yard- Land within such a Vill to have Common for 12 Cows, and for a Quarter of a Yard-land Common for 3, and for Half a Quarter for a Cow and an Half, and a Verdict for the Plaintiff. It was objected, that a Man could not prescribe to have Common for a Cow and an Half; but adjudg'd, that this being on a Verdict it shall be intended so as it can be (i. e.) Common for Half a Year, or that two Men had but one Cow, and so each of them had Half a Cow. Sid. 226. Mich. 6 Car. 2. B. R. Ellard v. Hill. If in Replevin so much of the Prescription be found as serves the Turn of the Party, tho' all be not found, it is sufficient. And here the

Replevin was brought for one Cow only, and the Plaintiff pleading a Prescription for four Cows and an Half is a good Justification for putting in of one Cow. Per Windham and Twidlen *Ceteris Absentibus*, and they gave Judgment for the Plaintiff. Lev. 141. Hill v. Ellard — It was urg'd in Arrest

Arrest of Judgment, that it should have been said, For the Half-Feeding of a Cow; but the said Justices held, that the Avowry being but for one Cow, it was sufficient, whether it was good for the Half Cow or not. Keb. 793. S. C. by Name of Hill v. Allen.

They must have a reasonable Cause of Commencement. 19. Prescriptions must have a *lawful Beginning*. Vent. 387. Potter v. North.

Every Prescription to charge a Subject with a Duty, must impart a Benefit or Recompence to him, or else some Reason must be shew'd Why a Duty is claim'd. Per Cur. 4 Mod. 323. Mich. 6 W. & M. B. R. in the Case of Warrington v. Moteley. — Prescription must be in a Thing done. Per Anderson Ch. J. Godb. 16. Pasch. 25 Eliz. C. B. in Skipwith's Case.

20. In Trespas for *taking &c.* his *Beasts*, the Defendant justified, for that he had a *Drift of Common*, to see that it was not surcharged, and that the Beasts were there surcharging the Common; and therefore he *took and detain'd them 'till 5^{l.} paid in Satisfaction of the Trespas*. Upon Demurrer it was objected, That a Prescription for Drift of Common doth not warrant a Distress unless he had prescribed to distrain also; but adjudg'd, that 'tis a Thing of Common Right for the Preservation of the Common. 2 Lev. 87. Pasch. 25 Car. 2. B. R. Bromfield v. Teigh.

25 One prescrib'd, that *by Reason of Repairing a Chapel of Ease* he had been Time out of Mind *exempted from contributing towards the Repairs of the Church*, and this was held a good Prescription. Freeman. Rep. 468. pl. 644. Mich. 1678. Wife v. Green.

22. A *Vicar* libell'd in the Spiritual Court for a Stipend of 4 l. per Annum, claiming it by Prescription, and Prohibition moved for upon Suggestion that *none can claim a Stipend by Prescription but a Corporation* or Body Politick; And so said Holt, and that a Sheriff, tho' removable at the Will of the King, may claim a Fee as incident to his Office. But against the Prohibition was cited Litt. Rep. 19. 51. 12 Mod. 249. Mich. 10 W. 3. Birch v. Wood.

(C) *Who may be bound by a Prescription.*

1. **A** Prescription does not run against the King there where he has Right. 38 Aff. 22.

2. As if the King was Patron of Right of a Chapel, another cannot have it by Prescription, and so bind the King. 38 Aff. 22.

3. A Corporation cannot prescribe to be discharged of the ancient Grand Custom, nor to receive it, because it is an annual Revenue of the Crown, and a Casualty, as Waif and Stray &c. 9. 6 Ja. Scaccario. Resolved.

And yet it was agreed, That a Parson of a Church may be charged of
4. A Man shall not charge the Heir in Annuity by Prescription, that his Ancestors have paid it Time out of Mind. Br. Prescription, pl. 11. cites 49 E. 3. 5. Per Belk. & tot. Cur.

Annuity by Prescription, but as a Corporation as it seems. Ibid.

5. It is said that a Vill may be bound by Prescription to provide a Pillory and Tumbrel, and that every Vill is bound of Common Right to provide a Pair of Stocks. Quære. 2 Hawk. Pl. C. 73. cap. 11. S. 5.

(D.) *What*

(D.) *What shall be a good Prescription. Where it is uncertain.*

1. **I**F Tenants of a Manor prescribe, that they ought not to pay a Fine for renewing their Copyhold Estates more than two Years Rent, * but ought to pay the Rent of two Years, or less; this is not a good Prescription for the uncertainty; for sometimes they are to pay two Years Rent, and sometimes less. *H. 37 El. B. R. between Greene and Bury. Per Curiam.*

* Fol. 255.

2. If a Man prescribes to pay a Penny or Thereabouts, for Tithes of every Acre of arable Land, this is not good Prescription for the uncertainty. *H. 7 Ja. B. Allen's Case. Per Curiam.*

3. Prescription for *Common sans Number* appurtenant to Land, without saying *Levant and Couchant*, is ill; you can put in no more than is proportionable to your Land. Per Twissden J. who cited the Case of *Hasselden v. Stoneby* in Glyn's Time, where such Prescription without *Levant and Couchant* was held good after a Verdict; but if it had been upon a Demurrer, it had been otherwise. *Mod. 7. Mich. 21 Car.*

Saund. 346.
S. C.—
2
Hill. 4—
2 Keb. 527.
552 570 —
2 Lev. 246.

2. B. R. in Case of the Corporation of Derby.

4. Trespass for digging Turf; the Defendant pleaded that he is seised of an ancient House, and prescribed *to have as much Turf in one Year as two Men could dig in one Day*, as belonging to his Messuage. The Plaintiff demurr'd, because he did not shew that the Turf was to be burnt in the House; and as it is laid here, it may be fold, tho' he claims it as appurtenant to his House. But it was answered and resolved, That when the Thing is uncertain, as *Estovers*, it ought to be applied to the House to ascertain it; but here it is certain enough in itself, scil. as much as two Men can dig in a Day; and for Authorities were cited *Rast. Ent. 539.* and *1 Cro. Spooner v. Day*; and Judgment was given for the Plaintiff. *Lev. 231. Hill. 19 & 20 Car. 2. Hayward v. Cunnington.*

Sid. 354.
Hill. 19 &
20 Car. 2.
B. R. S. C.

(E.) *Against the Publick Good.*

1. **A** MAN cannot prescribe to do a Thing which is a Nuisance; for it is against the Publick Good. *Hill. 15 Ja. B. R. adjudged Term. 16 Ja. B. R. in the Case of the Drovers. Resolved per totam Curiam.*

S. P. Jo. 222.
Per Crook.
Fatch 6
Car in Case
of James v.
Hayward.—
J. 491 S. C.

S. P. 2 Roll. R. 31 & 32. Trin. 16 Jac. in Case of Dewel v. Sanders.—Cro. J. 491 S. C.

2. As he cannot prescribe to lay Logs of Wood in a common Highway scrambling about, and suffer them to continue there for a long Time; for this is a Nuisance, and so against the Publick Good. *Hill. 15 Ja. B. adjudged between*

Cro. J. 446.
Mich. 15
Jac. Fowler
v. Saunders;
S. C.

3. If a Man prescribes that he and his Predecessors who have been seised of the Manor of *Coleherbert*, have been exempt from the Government of the Mayor of the City of London, and of all his Officers, this is not a good Prescription; for by this Means they of this Liberty shall be without Government, which is against Law, and therefore void. *H. 43 El. B. R. The Count of Shrewsbury's Case. Adjudged per Curiam in Quo Warranto.*

4. So it is not a good Prescription, that he and his Predecessors, seised of the said Manor, have used to have *Affise of Bread and Ale*, and

and

and also to have the Search of Weights and Measures, and to have the Punishment of them; for this belongs properly to a Court Leet to punish; and also he has not any Court to punish such Offences by Presentment or otherwise. *Hill. 43 El. B. R. The Count of Shrewsbury's Case. Adjudged per Curiam in Quo Warranto.*

To repair a Key, and to have Toll of all Goods brought within the River, is ill; but to

have Toll of all Goods put to Land within the Manor, tho' not at the Key, is good. 2 Lev. 96. *Hill. 25 & 26 Car. 2. in Case of Pridaure v. Warne, cites Trin. 7 W. 3. C. B. * Crisp v. Belwood.*

Br. Leet, pl. 10 cites S. C.

5. It is a good Prescription for the Corporation of Dublin, that they are Owners of the Port, and that they maintain Berches in the said River, and direct the Ships in the deep Chancel, and that they maintain the Key and Crane; and that in Consideration of this they prescribe to receive of all Merchandizes in the said Port 3 d. of the Pound; for here is *Quid pro Quo*. *M. 6 Ja. Seacc. Resolved.*

6. A Man cannot prescribe to be discharged of his Appearance at the Leet, by being sworn before the Constable and Portreeve, nor such like. *Br. Prescription, pl. 13. cites 2 H. 4. 15.*

7. For Inhabitants to dance in another's Soil *Omni tempore Anni* is a good Custom; and tho' pleaded by Way of Prescription, yet Judgment was given on a Verdict for Defendant in Trespass, tho' the Plaintiff moved this in Arrest of Judgment, and a Case cited where it was adjudged upon a Demurrer, that it ought to have been pleaded by Way of Custom. But per Cur. Tho' perhaps it had been ill upon Demurrer, yet Issue being taken and found by Verdict, it is good; and Defendant had Judgment. 1 Lev. 176. *Trin. 17 Car. 2. B. R. Abbot v. Weekly at Oxford.*

(F.) Against the Law of God.

Br. Prescription, pl. 91. cites S. C.

1. A MAN may prescribe to have a Way over a Church-yard, tho' it be Sanctuary. 18 E. 4. 8.

2. So to have a Way thro' a Church. 18 E. 4. 8. *Brook Prescription 91.*

3. It is no good Prescription that the Lord of a Vill shall have Fine of every Tenant who marries his Daughter without his Licence; For it is against the Law of Matrimony. *Br. Prescription, pl. 101. cites Littleton, tit. Villeinage.*

See Customs (E) G)

(G) Against the Law of Reason.

1. A Prescription against Reason is not good.

2. A Corporation prescribes to arrest a Man for Suspicion of Felony, and imprison him for three Days, and then to carry him to the next Gaol, and this is against Reason. 22 E. 4. 43.

A Vill cannot prescribe to keep possessed Persons in their Gaol of their Vill 3 Days before they carry them to the Common Gaol; For then they were irrepleviable by those 3 Days where they ought to be repleviable immediately by the Law, and also if they may so prescribe by 3 Days, they may do it for three Years which is not reasonable; *Per Brian Justice. Br. Prescription, pl. 80. cites 22 E. 4. 43.*

* In Trespass for Hunting in his Warren, and taking away 3. A Man cannot prescribe to have a * Chace or Warren in any Land but in his Demesnes, or in Land within his Fee and Seigniori. 3 D. 6. 13. b.

30 Hares and 300 Conies. Defendant justified, because he had *Common* in the Place where &c. to a *Messuage* and 6 *Vard Lands* for 240 *Sheep*, and that he and all those whose *Estate* he has Time out of Mind, have used at such Time as the *Common* was furnished with Conies to Hunt, Kill, and carry them away as to his *Messuage* appertaining. The Plaintiff demurred, because a Man cannot make such a Prescription in the free Warren and Freehold of another Man. And 2dly, because a Man cannot so prescribe to Hunt, Kill, and carry away his Conies as Appertaining to his *Messuage*; But a Man may prescribe to have so many Conies to spend in his *Houfe*; And for these Reasons the Prescription in the principal Case was held for a void Prescription, and Judgment given for the Plaintiff. Godb. 184 pl. 263. Hill. 9 Jac. B. R. *Samford v. Havel*.

4. If Lord of a Vill prescribes to have a Warren in all the Land within the Vill held of him, this is not good; For Conies dig Holes in the Land. 45 E. 3. 13. b. Contra 44 E. 3. 12. b. 3 D. 6. 13. v. Pol 266. In Quo Warren to the Defendant

claimed the Liberty of free Warren in R. and pleaded that he was seised in Fee of the Manor of R. whereof the Locus in quo &c. was Parcel, and so prescribes to have Liberty of Free Warren within all the said Manor and the Demesnes thereof, so that none shall chase any Game of Warren in the said Manor and Demesnes thereof without his Leave. Issue was taken, that he and all those whose Estate &c. had no free Warren within the said Manor and Demesnes thereof, and found for the Defendant. It was objected, that this Prescription was not good, viz. to have free Warren in the Manor and in the Demesnes of the Manor; for though he might prescribe to have it in his own Demesnes, yet he cannot prescribe to have it in the Lands of others his Freeholders; neither ought he to prescribe to have it as Appertaining to his Manor; but to this it was answered by Roll, That a Prescription to have free Warren in his Manor is good, as well in Lands of Freeholders as in the Demesnes; For being by Prescription it shall be intended, that this Liberty was before there were any Freeholders, whose Estates were afterwards extracted out of the Demesnes of the Manor after the Beginning of this Prescription. Cro. C. 311. Trin. 9 Car. B. R. The King v. Sherington Talbot — This Case is abridged by Hughes, pag. 1499. pl. 26. as resolved, and cites 9 Jac. B. R. The King v. Sherington. Cro. 1. par. 227. — And Nelf. Abr. pag. 12-8. pl. 11. taking it from Hughes, cites the Case as in 2 Cro. 227. Sherington's Case, and that it was adjudged — [But nothing more appears to have been said in the Report of Croke as to this Point than is mentioned to have been answered by Roll; nor does any Opinion of the Court as to this Point appear in the Report of the S. C. Jo. 320. The King v. Sherington Talbot]

5. In Replevin for taking a Sail of a Ship; the Defendant avowed, Another Exception was taken to this Prescription, it being to detain the Ship in Default of Payment of Toll, where-as the Matter of the Ship is in no Default, but the Owner of the Goods. Hale Ch. J. said, there are 3 Interests in a Port. 1. The Propriety of it. 2. The publick Interest of it for all the King's Subjects to come thither. 3. The Interest of the King to guard it. And it having been insisted, That a Man may prescribe for a Thing out of his Manor, as in Sir Henry Countess's Case for Wreck as far as he could see &c. Hale said, The Case of Wreck differed much from this; For that is Nullius in Bonis Sed adjournatur. Freem. Rep. 355. pl. 447. Mich. 1673. S. C. Raym. 232. Mich. 25 Car. 2. B. R. Prideaux v. Warne.

thither. 3. The Interest of the King to guard it. And it having been insisted, That a Man may prescribe for a Thing out of his Manor, as in Sir Henry Countess's Case for Wreck as far as he could see &c. Hale said, The Case of Wreck differed much from this; For that is Nullius in Bonis Sed adjournatur. Freem. Rep. 355. pl. 447. Mich. 1673. S. C.

See Customs
(1)

(H) Prescription. Against the Law of the Land.

1. **A** Sheriff of a County cannot prescribe to have Gifts, or to take any thing to his own Use as Sheriff; For he ought to take nothing for doing his Office. 42 E. 3. 5.

Noy 147. S. C. and S. P. agreed by the Court, and to the Mayor's
2. The Mayor of London may prescribe to have a Court of Chancery in London of Matters tried in the Court of the Sheriffs of London, though such Court cannot be granted by the Letters Patents of the King, D. 5 Ja. between *Andrew and Webb*, per Curiam.

Court of London, called the *Mark Court*, because the Mayor may mark any Cause in the Sheriff's Court before Judgment, altho' it be after Verdict, and may examine it. Cites 10 E. 6. 14. and that in the principal Case a *Procedendo* was granted to the Mayor's Court.

Roll R. 109. S. C.—Hob. 63. S. C. and there it is said that the Courts of Equity of London and the Cinque Ports are by reason of their having Acts of Parliament for them.—No Man can claim to hold a Court of Chancery by Prescription, because every Prescription is against Common Right, and a Chancery Court is founded upon Common Right, and is by the Common Law. Godb. 262. pl. 360. Mich. 15 Jac. B.R. The Mayor of York's Case.

3. The Mayor and Citizens of York cannot prescribe to have a Chancery there, and to award such Process as the Court of Chancery at Westminster awards; Because it is greatly dangerous that such Petty Corporations should have such Courts. D. 13 Ja. B. per Curiam, preter Warburton, between *Martin and Marshal*. Vide the same Case Hobart's Reports, 86.

(I) Against a Statute.

2 Inst. 20,
21.

1. **A** Man cannot prescribe or allege a Custom against a Statute; Because it is Matter of Record, and the most high Proof and Matter of Record in Law. Co. Litt. 115.

2 Inst. 21. S. P. as for Example, They of London claim by

2. A Man may prescribe or allege a Custom against an Act of Parliament, when the Prescription or Custom is saved or preserved by another Act. Co. Litt. 115.

Custom to give Lands in Mortmain without Licence, because this Custom is saved and preserved not only by Magna Charta, cap. 9. but by diverse other Statutes & sic de Cæteris.

There is a Diversity between Statutes that be in the Negative; For if a Statute in the Negative be declarative of the ancient Law,

3. A Statute in the Affirmative does not toll a Custom or Prescription. Co. Litt. 115.

4. [As] a Man may prescribe to cut his own Wood within a Forest without the View of the Forester, though the Statute of 34 E. 1. provides, that none shall cut any Tree, though his own Tree, within a Forest without the View of the Forester; Because this Act is but in Affirmance of the Common Law. 16 El. Scaccario, Adjudged. Co. Litt. 115.

that is in Affirmance of the Common Law, there a Man may as well prescribe or allege a Custom against such as he may against the Common Law. Co. Litt. 115. a. — But Lord Richardson denied this Diversity, and said, That in neither of the Cases a Prescription can be against a Negative Statute, which Mr. Attorney also affirmed, and therefore held it very strong, that a Prescription could not be to fell and sell Wood without View of Foresters, unless it were with the Help of an Allowance and then we must intend that there was a Charter upon which the first Allowance was made, because the Words are expressly negative, [viz.] Nec potest aliquis aliquid dare vel Vendere sine Licentia Domini Regis. Jo. 20, 21. 8 Car. Itin. Windsor in Lord Lovelace's Case — But Ibid. 289. The Counsel said, They took Ld. Coke's Difference to be a good Difference between a Statute which is only declarative of the Common Law, and a Negative Statute which is introductive of a new Law; that against the

the last no Prescription is good, but in the other Case no Alteration is made. ——— And 2 Buls. 36. Mich. 15 Jac. in Case of *John v. Smith*, it is said Arg. that a Man may prescribe against a Statute in the Affirmative, and cites 11 H. 4. 16. Stamford, fo. 38 and Fitzh. Nat. Brev. fo. 91. and 30 Aff. 38.

A Man may prescribe to hold a Leet oftner than twice a Year, and at other Days than are set forth in the Statute of Magna Charta, cap. 35. Because the Statute is in the Affirmative. 2 Le. 28. The Queen v. Partridge—Cro. E. 125. Hill. 31 Eliz. B. R. S. C.—S. P. but if it was a Leet by Grant, the Defendant in an Avowry for an Amerciament in the Leet must have shewn that it was held within a Month after Easter &c. Cro. E. 245. Hill. 53 & 34 Eliz. B. R. Porter v. Gray ——— Kelw. 148 a pl. 26.—

5 Le. 179. Lawson v. Hare.

Prescription for the Inhabitants of the Towns in Surry to cut down Wood in the Forest is not good; For per Noy Attorney General, there can be no Prescription since the Statute of *Charta de Foresta* cap. 4. which is, *That all Waists &c. done after that time without the King's Licence should be punishable*; Now, a Prescription to fell Wood *per ipsum Forestarium vel Verdariorum* is not good, but it must be *per ipsum* & *Allocationem Forestarium & Verdariorum*; For if it be *per Visum* only, then if the Forester or Verderor be required to come and view it, and do not come, you may cut it down without View. Jo. 275. 8 Car. In Trin. Windsor. The Inhabitants of Egham's Case. ——— But Ibid. 276. in a Memorandum, cites Sir Tho. Palmer's Case 5 Rep. 25. a. that there is no Diversity where the Wood is to be taken *per Visum*, or *per Visum* & *Allocationem*; For that in both Cases upon Request made and Refusal, the Party may take them without View or Delivery ——— Noy cited a Case to be resolved 6 Jac. that in a Case a Man might prescribe to cut down Wood, because they are not within the Statute of *Charta de Foresta*; whence it was strongly infer'd, that it could not be prescribed for within a Forest. Jo. 276.

5. Trespass, because the Defendant prescribed to distrain for * Rent upon * Orig. is the Land held, and to carry the Distress to D in another County, therefore (Term) but he was condemned; For a Man cannot prescribe against a Statute, and it seems it should be the † Statute is, that a Man shall not distrain in one County and carry (Term) — the Distress into another County. Br. Prescription, pl. 50 cites 30 Aff. 38. † Stat. Marl-

6. Attachment upon a Prohibition against the Defendant, who caused him [to be] cited for Tithes de Silva Cædua, and the Defendant prescribed to have Tithes de Silva Cædua, and by the Reporter he cannot prescribe against a Statute made after Time of Memory, and that Prescription cannot make it to be impleaded in the Spiritual Court, by which the Defendant imparled &c. Br. Prescription pl. 2. cites 9 H. 6. 56. bridge, cap. 4. and West. cap. 16.

(K) What shall be a good Prescription. Against Reason or Common Right.

1. **I**T is not a good Prescription to have a Heriot of every Stranger dying within his Manor 41 El. B. between Perkins and Cumberford, adjudged. cited M. 3 Ja. B. R.

2. If a Sheriff prescribe to have a certain Gift at every Tourn &c. This is against Common Right, For a Gift is at the Will of the Donor. 42. E. 3. 5. adjudged.

3. If there be a Lord of a Vill, and another has a Leet, but no Land beside the Leet, and he claims by Cause of the Leet to be Lord of the * Waists of the said Vill by Prescription. This is a void Prescription. 9 H. 6. 44. b. Curia.

4. A Man may prescribe to have a Fair in the Franktenement of another Man. 11 H. 6. 23.

* Fol. 267.

S. P. And to assign Booths there. Br.

Prescription, pl. 97. cites 11 H. 6. 25.

5. A Man may prescribe, That if his Beasts escape into the Land of B. that B. cannot distrain them, nor have Action, and a good Prescription; by all the Justices. Quare of the Reaton. Br. Prescription, pl. 71. cites 8 E. 4. 5.

6. In Trespass; by the Court, where a Man prescribes that in such a Vill has been a Market such a Day Time out of Mind, and justified for buying

Br Prescription
pl. 53
cites S. C.

buying the Goods there, this is a good Prescription, and a good Custom, tho' he does *not shew to whom the Market belongs*; For per Littleton it goes *with the Land*. Br. Customes, pl. 48. cites 12. E. 4. 8.

7. If a Man prescribes, that if he *finds Goods within his Manor, that he shall have them*, this is a void Prescription; For it is contrary to Reason, and a Thing which cannot have Lawful Commencement. Br. Prescription, pl. 93. cites Doct. & Stud. lib. 2. cap. 51.

Br Prescription
pl. 57;
cites 5. H. 7.
S. P.

8. It is no good Prescription to *distrain for Damage feasant, and to retain the Distress till he has Fine at his Will*; For it is contrary to Common Right and Reason, and a Man shall not be his own Judge. Br. Prescription, pl. 101. cites Littleton tit. Villeinage.

So the Custom in London to *shut*

9. Prescription to *cut Grass* in another's Land to *strengthen the Church* is good. Per Cur. Mar. 17. Pasch. 15 Car. in Bond's Case.

in the Land of another, is good. Per Cur. Mar. 17. in Bond's Case

— So for the Inhabitants of a Town to have a *Way* over the Land of another to their Church. Ibid.

10. In case the Plaintiff declared, that he was seised of an ancient Messuage &c. in T. and that he and all his Ancestors, whose Heir he is, Owners of the said &c. had used Time out of Mind to *set up Hurdles in Aperta Platea* of T. *near the said Messuage every Market Day, to make Panns for Sheep*, for which he &c. have used for such Penning to receive Money, and further, that the Defendant Brooke cut down his Hurdles, Per quod Proficium suum inde amisit; It was objected upon a Demurrer, That this Prescription was too general, it being to set up Hurdles in *Aperta Platea, not shewing whether on his own Lands, or on the Lands of another*; For though Fishermen may prescribe to set Stakes on other Men's Lands adjoining to the Sea to dry their Nets, that is for the Commonwealth; but this is only for a *private Gain*, which cannot be on the Lands of another; but it was answered that the Prescription was good; for a Market is as well for the Benefit of the Publick as Fishing; And afterwards Judgment was given for the Plaintiff, 1 Le. 108. pl. 147. Pasch. 30 Eliz. B. R. Ferrers's Case.

In arguing for the Reasonableness of this Prescription were cited S. E. 3. 37. b. where the Defendant justified in Tretpais for pulling down of a Fold as Servants to the Lady of the Manor of Hastings, who by reason of her Seigniori

11. The Plaintiff prescribed for *Toll of Goods bought within his Manor*, viz. 2d. For every Pack of Manchester Wares bought in Manchester, except of the Burgesses there; And the Question upon the Pleadings was, Whether a *Toll Independant of all Markets and Fairs* can be good, *without shewing that the Subject hath some Benefit*. The Court was not satisfied with this Prescription, because there was no Recompence for it; And every Prescription to charge the Subject with a Duty, must import some Benefit or Recompence to him who pays it, or else some Reason must be shewed why the Duty is claimed. 4 Mod. 319. 323. Mich. 6. W. & M. B. R. Warrington v. Moseley.

down of a Fold as Servants to the Lady of the Manor of Hastings, who by reason of her Seigniori had a *Frankfeld there, but the said Vill, so that no other could fold there without her Leave*; And it was held that tho' this extended as well to Strangers as to those of that Vill, it was good. And [D. 352. b. Trin. 18. Eliz. Anon. for a Custom called Granage] where the Lord Mayor of London brought an Action on the Case, grounded on a Custom to have the *20th Part of that Salt of every Stranger who brought it to the Port of London*; And though no Reason was alledged why he should have that Part, yet it was adjudged for the Mayor. But per Cur. The Case in Dyer seems to be very Hard to have the 20th Part, without giving any Reason why. But as for the Foldage, it was upon the Lands of the Manor of Hastings, where of the Tenants had the Feedings, and that may have a Reasonable Commencement. 4 Mod. 322. 323. — [The Case of the Foldage was adjourned over, and was that of Jefferey at Hay v Ford & Gray. Vide the Year Book.]

(L) Against the Law of the Land and Common Right.

1. **T**HE Tenants of a Manor may prescribe to have the sole Common for their horses in a Meadow after the Grass cut, and made

made into Grafs Cocks,* to tye and keep their Horses there, so that they do not meddle with the Hay, till Lammas Day and after Lammas Day for all Commonable Beasts Levant and Couchant upon their Tenements at large, without tying or keeping till Lady Day in Lent annually, as to their Tenements appertaining, excluding the Lord of the Meadow and Manor from having any Common or Pasture there for this Time, he having the Soil of the Meadow throughout the Year, and the whole Herbage till Lammas, or till the Cutting, if he keeps it for Hay. *Wheat-land and Sir Thomas Paine*, by Bramston Chief Justice, he only being in Court upon Evidence at a Trial at Barr, in an Action upon the Case for eating of the Common of a Commoner; But he agreed that the Defendant should have thereof a Special Verdict if he would, but after he would not have a Special Verdict for the Clecness of it, and upon this a General Verdict was given for the Plaintiff; For here the Lord is only excluded for a Time; And it is a Common, in as much as divers several Persons have Pasture there in respect of their several Tenements.

2. But *10. Ja. 3. & Tr. 10. Ja. 3. between Kenrick and Parpeter per Curiam* it is not a good Prescription, that the Lord from Lammas to Candlemas ought not to put in more than 3 Horses during this Time, Because the Lord cannot be fined.

The Lord may be fined *Yelv. 129 S. C. — Brownl. 187.*

S. C. — Noy 130 S. C. adjudged. — 2 Brownl. 60. S. C. The Pleaings — Cro. J. 208 S. C. [But that is only upon the Point of the Commoners distraining the Cattle of the Lord Damage feasant.]

3. If a Man prescribes to have Common of Pasture or Estovers in the Soil of another Man, and that the Owner of the Soil shall be excluded from having Common there, this is a Prescription or Custom against the Law, to exclude the Owner of the Soil; for it is against the Nature of this Word Common; for it was implied upon the first Grant of the Common there, that the Owner of the Soil should intercommon with him. *Co. Litt. 122.* and there cited *10. 26 El. W. R. between White and Skirland* adjudged.

See the Notes upon pl. 6, 7

4. A Man may prescribe to have Separalem Piscariam in such Water, and thereby to exclude the Lord of the Soil. *Co. Litt. 122.*

5. But a Man cannot prescribe to have Common of Piscary or Libera Piscarie in such Water, and to exclude the Owner of the Soil; for it is against the Nature of a Common of Libera Piscaria. *Co. Litt. 122.* And there said that it was resolved in Bank between *Chimney and Fiften.* And *10. 29. El. between White and Skirland,* and between *Er. sten and Crothkred* the same Term.

6. A Man may prescribe to have Solam Vesturam of certain Lands from such a Day to such a Day, and by this to exclude the Owner of the Soil from Pasturing or Feeding there; for by such Grant this is not any Common, nor implies any Intercommoning by the Owner of the Soil, but that the Grantee shall have the sole Pasture. *Co. Litt. 122.*

In Reply. vin &c. for taking his Cattle in 5 Acres of Land, the Defendant avowed as Bailiff of Sir G. S. and laid a Pre-

7. So a Man may prescribe to have Separalem Pasturam of such Land, and to exclude the Owner of the Soil. *Co. Litt. 122.*

scription in him to have Herbage and Pasturage in the said five Acres, when it was not sown murr'd; it was objected, That this Prescription was not good, it being not like a Prescription to have Common, which is only a Taking the Profits by the Mouths of Cattle, but this is all one as to prescribe to have the Land itself; for by the Demise of the Herbage the Land itself passeth. But adjudged that the Prescription was good, because it might have a good beginning by Grant, and consequently if it might be good by Grant, it may be good by Prescription. *Winch 6. Pasch. 19 Jac. Sir George Spaukens Case* — *Hutt. 45 S. C.* By the Name of *Pitt v. Chick*

Plaintiff de-

In Trespass by the Lord of the Manor, the Defendant as Tenant prescribed to have Solam Pasturam of a Close *Omni tempore Anni*. The Court was divided in Opinion, whether this Prescription to have sole Pasture of a Close of the Lord's *Omni tempore Anni* be good. *Wild and Archer J.* held it good, but *Vaughan Ch. J.* and *Tyrrrel contra.* It was intended to have been admitted into the Freehold Chamber, but was not. Afterwards it was brought into B. R. and the Prescription adjudged good. *Term.*

253 Mich. 20 Car. 2. C. B. Sir Hen. North v. Cox — S. C. Vaugh. 251 to 253. the Court was divided. — Vent 383 to 398. S. P. (inter alia) argued by Sir Francis North, in the Case of *Potter v. North*, in the Court of Exchequer; and the Report says, pag. 398. That afterwards at another Action was brought to Trial in the Exchequer, and after a full Evidence of about 4 or 5 Hours, the Plaintiff not daring to stand to the Verdict, was nonsuited. — S. C. Lev. 268. 269. where it was argued that Prescription to have *Solum Pasturam*, and exclude the Lord, is not good; and to that Purpose were cited Finch. Prescription 51. Hutt. 45. Co. Litt 122 Yelv. 129 Cro. J. 256. whence it was infer'd that the Tenants might prescribe to have Part of the Profits throughout the whole Year, or all the Profits for Part of the Year; but that this here is to exclude the Lord of all the Profits, and is like a Custom to have all the Common, and exclude the Lord. But it was answered and resolved, That this is not to exclude the Lord of all the Profits; for he shall have the Mines and the Trees, and is not like to a Prescription to have all the Common, and exclude the Lord, which would be repugnant; for in all Cases of Common the Lord is to intercommon with the Tenants in the Nature of Common; and consequently to exclude the Lord would be repugnant to the Essence of Common; and Judgment was given for the Defendant. Trin. 21 Car. B. R. — Saund. 347 to 353. The Pleadings and Arguments of the Counsel And says the Court seem'd to incline that the Prescription was good; but that upon a Trial at Bar the Tenants could not prove their Title as alleg'd; whereupon the Lord had a Verdict. — In arguing this Case, the Counsel for the Plaintiff cited a Case in Trin. 1654 Rot 549. in B. R. where one claimed a *Feld-turfe*, and excluded the Owner of the Soil by Prescription, and adjudged good. — And that a Prescription by the Copyholders to have *Solum Pasturam*, exclusive of the Lord, was adjudged good; but that notwithstanding such Prescription the Soil is the Lord's, and he hath Mines, Trees, Bushes, Coals, Stones &c. and he may dig for Turfs. 2 Lev. 2. Pasch. 23 Car. 2. B. R. *Hopkins v. Robinson*, and Mod. 74 Mich. 22 Car. 2. B. R. by the Name of *Hoskins v. Robins* — 2 Saund. 324 S. C. adjudg'd. — Pollexf. Rep. 13 to 23. S. C. argued by Pollexfen, and adjudged. — S. C. cited by the Reporter as adjudged. Vent. 398. at the End of the Case of *Potter v. North*.

* Orig. is
(Dostells.)

8. Attachment upon a Prohibition, the Defendant prescribed that the Clerks of Oxford have Privilege to have the principal * Houses, which were wont to be let to Clerks before any other, and especially where Clerks were abiding before; and after Issue was taken, if Clerks were abiding there at the Commencement of the Suit, or not; and therefore in a Manner confes'd that this is a good Prescription. Quære; for they are not Incorporate, nor People which have had Continuance. And per Finch, The Merchants of the Staple have the like Custom, and those of the King's Marshalsea and the King's Justices; quære if the Inns of Court are not in the like Plight. Br. Prescription, pl. 8. cites 40 E. 3. 16.

Brownl. 219.
S. C. Yelv.
18- adjudg'd.
S. C. by
the Name of
Dewclas &c.
v. Kendal
&c.

9. Trespass &c. for Taking and Carrying away 30 Loads of Thorns, by him cut down and lying on his Land at C. in a Place called the Common Waste. Defendant justified, That he was seised in Fee of a Messuage and three Acres of Land &c. and so prescribes to cut down and take All the Thorns growing in the said Place, to spend in the said House, or about the said Lands as appurtenant thereunto. The Plaintiff replied, That R. S. was seised in Fee of the Manor of C. whereof the said Estate was Parcel, and gave him Leave to take the Thorns. Adjudged that this Prescription by the Defendant excludes the Lord; so that he can neither cut or license any other to cut Thorns. Cro. J. 256. Mich. 8 Ja. B. R. *Duglass v. Kendal*.

Fol. 268.

(M.) What shall be a good Prescription. In Respect of the Time.

1. **I**N an Action brought by the Prior of Coventry against some of the Men of Earle-street in the Vill of Coventry, for the selling of Merchandizes in their Houses and Shops, in the Days of the Market held in Prioryshale [or Market-house] in the same Vill. The Defendants say, Quod Ranulphus quondam Comes Cestrie Dominus de Earle-street concessit Hominibus suis de Earle-street to have the same Liberties as Lincoln had, and shews the Charter testifying the same, and also shews the Charter of Confirmation thereof made by H. 2. And say that Idem Comes habuit Mercatum ibidem &c. & Heredes

Heredes sui, until one of the Heirs leased it to Farm to the Prior of Coventry, unde ipsi Defendentes dicunt, quod ipsi & Antecessores sui ac eorum Feoffatores & eorum Antecessores tenebantur tenere, quæ ipsi nunc tenent in Earle-street, a tempore quo non extat Memoria ac etiam a tempore prædicti Comitris & antecessorum suorum semper hucusque in Domibus & Seldis suis in ipso loco constructis Omnimoda Mercimonia vendiderunt &c. But the Defendants were demanded by the Justices, Si ipsi porrexerint prædictas Chartas pro Titulo aut pro Evidentia facti sui prædicti & si se tenere velint ad Chartas illas pro Titulo an ad Consuetudinem prædictam. Qui dicunt quod protulerunt Chartas illas ad Evidentiam; and upon this Issue was taken upon the Prescription. 2 E. 2.

2. In Writ of Annuity by a Prior, if he counts upon a Prescription, it is good for the Defendant to say that the Priory was founded since the Time of King Richard. 24 H. 6. 37.

3. In an Annuity by Prescription the Defendant pleaded, that it was granted upon a Composition, and so he ought to count upon the Composition. But there it is said by Newton, that if he shall count upon this Composition, then it shall come in Issue whether it was made before Time of Memory, [and] then it cannot be tried; but if the Title had commenced with the Possession since Time of Memory, this may be known by the Jurors; and if they cannot find it, then the Prescription is good. 19 H. 6. 75.

4. A Man shall not have any Advantage by Allegation of a Foundation, or other Matter in Fact to be done before Time of Memory; because this cannot be tried. 1 E. 4. 6. h.

5. So a Man shall not have any Advantage by Allegation of a Deed or Specialty made before Time of Memory, because this cannot be tried. 1 E. 4. 6. h. 14 H. 7. 1. of a Deed of a Rent-charge whereof he had not Seisin within Time of Memory.

6. So a Man shall not have any Advantage of a Record before Time of Memory, because it cannot be tried. As he shall not have Execution of a Fine. 1 E. 4. 6. h. And yet Bingham there said, that he never saw any Record of the King before the Time of H. 3. of this Opinion; for there was held a Diversity between a Record and Deeds, and Matters in Fact. 19 H. 6. 75. b. But Bingham said That now they are held all one as to this Intent, viz. That he shall not have Advantage either in one Case or the other. Ibid.

7. If the King before Time of Memory had made a Grant, this is not of any Effect as a Patent after Time of Memory, unless it had been allowed in Eier within Time of Memory. 19 H. 6. 75. b. 9 H.

7. 11. b. Per Curiam, of Conusance of Pleas. 2 E. 4. 23. accordingly. Co. 9. Ab. Stra. Mar. 27. b. Contra 12 H. 4. 22. b.

8. If a Vill be incorporated by Letters Patents before Time of Memory, and those Franchises never [were] used since Time of Memory, they have lost their Franchises. 14 H. 7. 1.

9. Such Things as do not ly in Point of Prescription, but ought to be created and supported by Charter, and the Charters thereof were made before Time of Memory, they are not pleadable nor of any Avail, if they have not been allowed within Time of Memory. Co. 9. Ab. Stra. Mar. 27. b. 1 H. 7. 23. b.

10. It is clear enough, that there was a certain Time which was called the Time of Memory in Prescription. 19 H. 6. 75. Per Newton. 1 E. 4. 6. h. 9 H. 7. 11. 14 H. 7. 1.

11. The said Time of Memory in a Prescription was from the Time of King R. 1. 20 H. 6. 3. D. 3 Mar. 119. 5. 13 H. 4. 9. b. The Time of King John [is] within Memory. Lit. S. 170. 34 H. 6. 36. b. 37.

12. The said Time of Memory was from the Commencement of the Reign of King R. 1. for all the Time of King Richard 1. was within

Br. Franchise, pl. 10. S. C. Per Vavisor.

Fol. 269.

In Annuity the Parties were at Issue upon Prescription of the Annuity, and the Plaintiff gave in Evidence a Deed bearing Date after the Time

of King R. 1 within the Time of Memory. 20 H. 6. 3. Per Newton. 13 H. 4. and the Defendant would have demurr'd in Law upon it, and the Plaintiff would not, but said, that he used it for Confirmation, and not as an Original Grant; and admitted there, that where the Prescription is in Issue, it suffers for the Jury to inquire of the Time of their own Memory, where no special Evidence is to the contrary. Br. Prescription pl 6 cites * 36 H. 6. 36. — But where special Evidence is to the contrary, as above, there they ought to inquire of the Time of King R. 1. Ibid. — And Per Prisot there it is a good Plea, that the Church & c. which the Prior prescribes was founded after the Time of King R. 1. or after Time of Memory. Ibid. — So, that it was founded in the Time of King John. Ibid. — But Brook says, It seems that in those Cases he ought to traverse the Prescription; for otherwise it is only Argument. Ibid. — So it seems at this Day by the Statute of Limitations 32 H. 8. to say, that the Church was founded within the 60 Years, or the like Ibid. — [* It should be 34 H. 6. 36.] — † Br. is (De que le por pl. fait.) but the Year-Book is as translated.

14. But when by the Statute of Limitations the Seisin in a Writ of Right was limited to the Time of R. 1. so that none could count of a more ancient Seisin; and this Writ being the most High Writ was taken within the Equity of the Statute; also, that tho' a Man might prove to the contrary of a Thing whereof the Prescription was made, yet this should not destroy the Prescription if the Proof was of a Thing before the said Time of Limitation; for it was Reason that the Inquiry in a Prescription should be limited as well as in a Writ of Right, being more base than that; for it would be hard to put Juries to inquire of Things so ancient. And therefore it is said in 13 H. 4. 9. b. that the Limitation in Writ of Right is too long Time for a Prescription; and yet this Limitation is not changed, nor can be without Statute.

15. Rot. Parl. 43 E. 3. M. 16. Pray the Commons, because all the Time of R. 1. is held for Time of Memory, from which Time no Man may have true Cognizance, that it please to limit in certain the Time of Memory, so that it doth not pass the Coronation of King Edward Grandfather of our Lord the King, who now is; and like Petition was for diverse Opinions and Dischies which happened 46 E. 3. M. 28. but no Assent to them. But the Answer to the first Petition is, Let the Law stand as it has done heretofore till it be otherwise ordained.

16. It seems that as the Time of Memory in a Prescription was limited to the Time of R. 1. * a Seisin in a Writ of Right within the Equity of the Statute of W. 1. so that by the same Reason, the Time of Memory at this Day shall be limited to 60 Years, as a Writ of Right within the Equity of the Statute of 32 H. 8. cap. 2. for this is within the same Dischies mentioned in the Preamble of the Statute. But I well know, that the Practice is e contra.

* Orig. is (Selonque ceo)

Nov 2. S. C. adjudg'd — Adjudg'd in a Prohibition in B. R. that a Parson cannot prescribe against the

Composition of the Vicar for Things allow'd the Vicar by the Composition. And it was likewise decreed in Chancery, that the Prescription was not lawful against the Composition; and an Injunction was awarded for the Vicar to stay the Suit of the Parson limited to the Vicar upon the Composition. Mo. 701. pl. 1055. & 780. pl. 1081. S. C. — S. C. cited Watf. Comp. Inc. 8vo. 730, 731. cap. 39.

17. A Vicar endow'd De Minutis Decimis Anno Domini 1310. sues the Parson appropriate for them; the Parson cannot prescribe against this Endowment, tho' it was 300 Years past; for the Prescription ought to commence since the Endowment, which was since the Time of Limitation, Scil. R. 1. D. 3. Ia. B. R. between Prince and Child. Adjudg'd.

18. Common Law admits of no Prescriptions but what are Time out of Mind &c. tho' the Spiritual Court allows of Prescriptions sometimes of

* (Q) *How* it may be *made*. [Affirmatively or Negatively.]

1. † Prescription in in the Affirmative is good. 11 E. 4. 2. 18 E. 4.
3. b.

2. A Prescription in the Negative merely is not good. 11 C. 4. Br. Prescription, pl. 17.
2. b. 18 C. 4. 3. b. 8 H. 6. 4. cites - H. 6
32. and 8 H. 6. 3.

4. It is a good Prescription, that he and his Ancestors, and all those whole Estate he has in such a Manor have used Time &c. to buy in such a Market or Fair &c. and not to pay any Toll; for this is Negative mix'd with the Affirmative, which Affirmative proves it to be put in use. 8 D. 6. 4.

S.P. But it shall be in the Affirmative as to say, that *he and his Ancestors have been quit of Toll Time*
out of Mind. Br. Prescription. pl. 76. cites 18 E.4. 3.

whose Estate Sec. were seized of the same Rent as Parcel of the same Manor Time out of Mind. Ibid.

8. *Trespass upon the Cause for stopping of a Sewer, by which 12 Acres of Land of the Plaintiff are surrounded in A. The Defendant prescrib'd, that N. W. his Lessor, and all those whose Estate he has in a Mill in A. have used to stop when the Mill wanted Water, and to repair a Bay and Gutter, and N. W. leased to him for Years yet continuing &c. by which he stopped and repaired the Sewer &c. and the other said, that De son Tort Demaigne, and travers'd the Prescription to stop. Br. Prescription. pl. 44. cites 59 H. 6. 32.*

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9. *In the Cinque Ports* they prescribe, that *Writ of the King* does not run there, and well, and yet it is *in the Negative*; the Reason seems to be, because it is a Negative with an Affirmative. Br. Prescription. pl. 65. cites 2 E. 4. 18.

10. In Trespass the Defendant *justify'd for Damage feasant*; the Plaintiff said, that he had certain Land in D. and that D. and S. adjoin, and that all the Inhabitants of the Villis aforesaid have used to intercommon because of Vicinage Time out of Mind. Per Choke, You ought to allege the Prescription in the Tenant of the Franktenement; for Tenant for Term of Years, nor at Will, cannot prescribe or allege Corporation by Name of Inhabitants; But Per Danby and Littleton, if the Usage be as above, this is good Pleading; Brook says, *Quere*, for the Law seems to be with Choke. Br. Prescription. pl. 69. cites 7 E. 4. 26.

11. Prescription by a *Que Estate* is not retrained by the Statute of Limitation. 32 H. 8. 2. Br. Lect. Stat. Limit. 35, 40.

12. Where a Charge is on the Defendant of Common Right, which by Law he is Subject to, the Plaintiff need not prescribe in his Declaration. 1 Salk. 22. Mich. 3 Ann. B. R. Tenant v. Golding.

(R) *Liberties.* What Liberties a Man may have by Prescription.

1. **SUCH Franchises and Liberties**, which cannot be seized as forfeited before the Cause of Forfeiture appears of Record, cannot be claim'd by Prescription; because Prescription being but an usage en Pais, cannot extend to such Things which cannot be seized or had without Matter of Record. Co. Litt. 114. Co. 5. Foxley 109. b.

Br. Prescrip-
tion. pl. 60
cites 9 H. 7.
20.— pl. 64.
cites 5 H. 4.
118—9 Rep 27. b.

2. As a Man cannot have Goods and Chattels of Traitors, * Felons, Felons of themselves, or Fugitives. Co. Litt. 114. Co. 5. Foxley 109. b. Co. 9. Abb. Stra. Mar. 24. b.

Abb. Stra. Marcella.—* S. P. without shewing Charter before Time of Memory, and Allowance in Eyre after Time of Memory. Br. Prescription. pl. 56. cites 1 H. 7. 23. — Br. Corone. pl. 128. cites S. C. — But Per Knivet Ch. J. a Man cannot prescribe in Bona Felonum & Fugitivorum; for this belongs to the King's Crown, and cannot pass but by Grant. Br. Prescription. pl. 10. cites 46 E. 3. 16. — S. P. Br. Elstray. pl. 2. cites 44 E. 3. 19. — S. P. And this seems to be of the proper Goods of the Felon, but a Man may prescribe in Goods stolen and waived; for a Felon has no Property. Br. Elstray. pl. 13. cites 46 E. 3. 16. — Tho' a Man cannot prescribe in the said Franchise to have Bona & Catalla Proditorum, Felonum &c. yet may they or the like be had Obliquely, or by a Mean by Prescription; for a County Palatine may be claimed by Prescription, and by reason thereof to have Bona & Catalla Proditorum, Felonum &c. Co. Litt. 114. b.

S. P. Br. Co-
rone. pl. 128.
cites 1 H. 7.
22, 23, 25.

3. So a Man cannot have Goods and Chattels of those who are put in Exigent by Prescription. Co. Litt. 114. Goods of Outlaws cannot be forfeited by Prescription, because they are not forfeited till the Outlawry appears of Record. Co. Litt. 288. b.

4. So a Man cannot have Deodands by Prescription. Co. Litt.

S. P. without
shewing Char-
ter before

114.
5. So a Man cannot have Conusance of Pleas by Prescription. Co. Litt. 114.

Time of Memory, and Allowance in Eyre after Time of Memory. Br. Prescription. pl. 56. cites 1 H. 7. 23. — Br. Corone. pl. 128. cites S. C. — S. P. But a Man may prescribe Tenere Placita. Br. Prescription. pl. 59. cites 9 H. 7. 11. — S. P. by Holt Ch. J. For the having Conusance of Pleas excludes other Jurisdiction. Comb. 282. Trin. 6 W. & M. B. R. in the Case of Millard v. Cole. — But as to Conusance of Pleas the King himself cannot have it but by Matter of Record, and therefore a common Person cannot be in a better Condition. Br. Prescription. pl. 64. cites 5 H. 4. 118. [It should be 5 E. 4. 118.]

6. So a Man cannot prescribe to make a Corporation. **Co. Litt.** *The Citizens of London* *prescrib'd*
114. b. in Usage, that Guild or Fraternity may make another Guild and Fraternity; and the Custom was condemn'd by Award, for none may do it but the King, or he who has the King's Charter to do it by express Words. *Br. Customs.* pl. 40. cites 49 Aff. S. — *Br. Prescription.* pl. 55. cites S. C.

7. So a Man cannot have a Sanctuary by Prescription. **Co. Litt.** *S. P. without shewing Charter of the*
114. b. *King before Time of Memory, and Allowance in Eyre after Time of Memory.* *Br. Prescription.* pl. 56. cites 1 H. 7. 23. — *Br. Corone.* pl. 128. cites S. C. — *Br. Sanctuary.* pl. 15. cites S. C. — *S. P. Br. Sanctuary.* pl. 8. cites 1 H. 7. 6. — *S. P. Hawk. Pl. C.* 336. S. 3. — *S. P.* But if he has ancient Charter and Usage, he may prescribe. *Br. Prescription.* pl. 65. cites 2 E. 4. 18. Per Choke. But *Br.* cites fol. 23. where the Opinion was, That it was not good, tho' a Grant of the King, before Memory was shewn and Usage after; because it is against Common Right, and cannot have a lawful Beginning.

8. So he cannot prescribe to make a Coroner. **Co. Litt.** **114. b.** *Serjeant Hawkins*
says, It is clearly supposed by the Statute of 28 E. 3. 6. that not only the King but also other Lords have the Franchise of making Coroners; From whence it seems reasonable to infer, That the King may lawfully claim such Franchise by Prescription, and that other Lords may claim it by Grant from the Crown; but it is a Privilege of so high a Nature, that no Subject can well intitle himself to it by Prescription only. 2 *Hawk. Pl. C.* 44. cap. 9. S. 11.

9. So a Man cannot prescribe to make Conservators of the Peace. **Co. Litt.** **114. b.** *Serjeant Hawkins*
says, It is question'd by some, Whether such Power can be claimed by Usage? Yet if the Power of holding Pleas, and even Courts of Record, which are of so high a Nature, and imply a Power of keeping the Peace within their own Precincts, may be claim'd by Usage, as it seems to be certain that they may; it seems strange, that the bare Authority of keeping the Peace in a certain District may not as well be claimed by such Usage. 2 *Hawk. Pl. C.* 34. cap. 8. S. 10.

10. In Trespass, the Mayor of L. justified because it had been used Time out of Mind, that the Mayors have been Conservators of the Peace, and have used, for Affrays done in their Presence, to commit the Offenders to Prison till they have found Surety of the Peace. Brian said, You have no such Power, but to commit him to Ward till he has made Fine; and by him and Pigot, The Power of the Mayor cannot rest upon the Usage. *Br. Prescription.* pl. 79. cites 21 E. 4. 67.

11. A Man can't prescribe to levy Fines in his Court of Lands within his Manor, because Fine is a Record which no Man shall have by Prescription, and the King upon every Concord is Donor, which a Man can't be by Prescription. *Denih. R. of Fines* 3.

12. It was held by Hale Ch. B. that Return of Writs may be claimed by Prescription, as appertaining to a Manor. And so it appears in
* Quo Warranto 2. in 42 Eliz. where the Law is admitted to be so, tho' the Prescription there was not well laid to intitle the Party to it; but more especially may it be claimed as appertaining to an Honour, as it was held in 19 Jac. in Howard's Case, in the Case of the Honour of Clun; for Honours have more large Incidents than Manors have. *Hard.* 423. *Trin.* 17 Car. 2. in *Scacc.* Countess of Pembroke v. The Earl of Burlington. But Doderidge Arguendo said, that Returna Brevium could not be gained by Prescription out of the Crown. *Mo.* 60. pl. 918. *Mich.* 43 &c

44 Eliz. B. R. in Cornwall's Case --* S. C. Cited per Hale Ch. B. *Vent.* 405. as the Earl of Shrewsbury's Case; and says you will find the Pleadings in the New Entries Quo Warranto, pl. 2. *Mich.* 41 & 42 Eliz. B. R.

(S.) What Things a Man may have by Prescription.

1. A MAN may have Treasure Trove by Prescription. **Co.** [114. b.]

2. So

S. P. Br. 2. So he may have Waifs and Estrays by Prescription. Co. Litt. Estray, pl. 2. cites 44 E. 3. 114. b. Co. 5. Forley 109. b.
19. —S. P. Br. Prescription, pl. 56. cites 1 H. 7. 23 —Br. Corone, pl. 128 cites S. C. —Br. Prescription, pl. 10 cites 46 E. 3. 16. —pl. 60 cites 9 H. 7. 20. —And a Man may prescribe in Waif and Leet, *curtess freehold of Allowance* within Time of Memory, because it stands with Common Right. Br. Ibid. pl. 65 cites 2 E. 4. 23.

Br. Prescription 3. So he may have Wreck of the Sea by Prescription. Co. Litt. tion, pl. 14. 114. b.
cites 11 H. 4. 15 S. P. —pl. 60 cites 9 H. 7. 20. S. P. —S. P. Br. Ibid. pl. 56 cites 1 H. 7. 23 —Ibid —Br. Corone, pl. 128. cites S. C. —S. P. Per Thirn; but per Hank, he ought to have Charter thereof, or Allowance in Eyre Quere of Allowance, for per Thirn, Several Franchises are enjoyed in England without Allowance in Eyre. Br. Prescription, pl. 83. cites 11 H. 4. 16.

See (R.) 4. So he may hold Pleas by Prescription. Co. Litt. 114. b.
pl. 5.

And a Man 5. So he may have a Court Leet or Hundred by Prescription. Co. may pre- Litt. 114. b.
scribe to de-
sturb a Leet. See Br. Action sur Case, pl. 75. cites 38 H. 6. 16.

6. So he may have Infangthief and Outfangthief by Prescription. Co. Litt. 114. b.
Fol. 2-1.
Br. Prescription, pl. 10. cites 46 E. 3. 16.

*A Man may 7. So he may have a * Park or Warren by Prescription. Co. prescribe that he and Litt. 114. b.
all those whose Estate he has in the Manor of D. have had Park in the same Manor as appendant &c. and good. Br. Prescription, pl. 57. cites Itin. Not 3 E. 3. —Br. Prescription, pl. 188. S. P.

S. P. - Rep. 8. So he may have Royal Fish by Prescription, as Whales, Sturgeon &c. Co. Litt. 114. b.
18. b Trin
34 Eliz in
the Case of Swans, cites 39 E. 3. 39. —A Man may allege a *Piscary to be appendant to House and Land*, and may prescribe in it also. Br. Prescription, pl. 66. cites 4 E. 4. 29.

9. So he may have Fairs and Markets by Prescription. Co. Litt. 114. b.

10. So he may have the Custody of a Gaol by Prescription. Co. Litt. 114. b.

Frank- 11. So he may have a Frankfoldage by Prescription. Co. Litt. foldage can- 114. b.
not be but ap-

pendant to some Land, and a Man may prescribe that he and his Ancestors Time out of Mind have had Frankfoldage of the Beasts of his Tenants in C. and his Termor for Years need not *show Deed*, for he does not claim but a *Chattle*. Per Brian and Townsend. Br. Prescription, pl. 105. cites 1 H. 7. 24.

In Treipar's Defendant justified under a Prescription, that the *Lords of the Manor of H* have, and always used to have *Free-foldage throughout the Vill of H*. and to have the Penning of the Sheep; *so that the Vill of H ought not to have Free-foldage without Consent of the Lord*; and that if any levied a Fold without such Consent, the Lord had us'd to abate it. It was urg'd that this Prescription is void, being against Common Right, which gives every one Foldage in his own Land. Sed non allocatur; for every Prescription is against Common Right. 8 Rep. 125. cites 8 E. 3. 37. a. b. Jeffery at Hay's Case —and cites 3 E. 3. 37. a. John de Sedgefords Case S. P. —S. C. cited 2 Brownl. 287. —2 Bull. 193. —The Reporter observes upon this Case, that tho' Foldage of Sheep is for the Maintenance of Agriculture (which is so much favoured in Law) yet by Custom one may be barr'd of it upon his own Land, and he of whom the Land is holden may have it. 8 Rep. 125. b.

S. P. And it was objected that this Prescription was not good, it being against Law and Common Right to abridge the Subject of the Profits of his Lands; but adjudged, that the Prescription was good; for it did not intend to deprive the Subject of the whole Interest and Profits of his Lands, which would not have been good, but only restrained him to set up Hurdles, which is a reasonable Prescription, and restrains a Particular Profit only. Le. 11. pl. 14. Mich. 25 & 26 Eliz. B. R. Pantany v. Leader.

12. In Assise of Rent the Assise found that the Plaintiff, and those whose Estate he has in the Rent, were thereof seised Time out of Mind, and the

the Plaintiff Seis'd and Disleis'd, and Recover'd; and to note Rent recover'd by Prescription. Br. Prescription, pl. 46. cites 13 Afl. 4.

13. The Defendant prescribed in *Toll-thorough*; Thorp, Justice, said, This is to go through the Highway, which every one may lawfully do, and therefore *it is a void Prescription*; but a Man may prescribe in *Toll-traverse*; For this is to pass over my Land; Note the Diversity; For none denied it, and Issue was taken that it was not a High Street. Br. Prescription, pl. 88. cites 22 Afl. 58.

14. If a Man be impleaded within the Precinct of the Monastery of *St. of the Westminster*, of Land in London, he may say, that Time out of Mind *Cinque Ports*; Lands in London have been impleaded in London in the *Hustings* before the Mayor &c. Per Laicon; Quod Danby concealit. Br. Prescription, pl. 65. cites 2 E. 4. 18.

and per Neeham, the same in Chester and Hales. Br. Prescription, pl. 65. cites 2 E. 4. 18.

15. Trespass of Sheep taken, the Defendant said, That the Land where the Trespass is supposed is His Franktenement, where he has Foldage, and that he and all those whose Estate he has have used that if any depasture his Sheep with the Sheep of the Defendant in the Day that the Defendant shall have them in the Night for their Dung, for their Pasture in the Day, by which he took and folded them in the Night because they pastured with his Sheep the Day before, and in the Morning he put them out again; and a good Prescription, per Fairfax and Tremail; For it may have lawful Commencement, and the Plaintiff has *Quid pro Quo*, scilicet, the Pasture for the Dung. Br. Prescription, pl. 57. cites 5 H. 7. 9.

16. In a Leet the Lord may prescribe to have of every one, who makes an Affray or Bloodshed, 20 s. and may prescribe to distrain for it, and sell the Distress; For this is the Court of the King, and he derives his Interest from the King. Br. Prescription, pl. 40. cites 21 H. 7. 40.

S. B. Br. Prescription, pl. 106. cites 11 H. 7. 13, 14.

17. There cannot be a Prescription to have *Omnia Bona & Catalla foristacta* within &c. Cro. E. 560. Pasch. 39 Eliz. B. R. in Case of the Earl of Pembroke v. Berkley.

18. To have Pasturage for two Horses in a Meadow of 1000 Acres till the Grass is mowed was held well enough; For being in so great a Quantity of Land cannot defoul or debruise the Grass so, but that the Hay may well be made thereof. Cro. J. 27. Pasch. 2 Jac. B. R. Thornell v. Laffels.

19. A Man cannot prescribe to have *Finis pro Licentia Concordandi*; because they are Prerogatives of the Crown, and an ancient Flower of it. Arg. Lat. 46, 47. Trin. 2 Car. in Sir Edmond Bacon's Case. —Cites Glanvil 7. cap. 1. & D. 202.

20. For Matters of Interest it is a Rule, that nothing may be prescribed for, that cannot at this Day be raised by Grant; Per Sir Francis North. Arg. Vent. 387. Potter v. North.

21. Prescription to have all the Loppings of all Trees called Pollards in such a Place seems good. Per Raymond Ch. J. Gibb. 87. Trin. 2 & 3 Geo. 2. B. R. Dickins v. Hampstead.

(T) Destruction. What may destroy it.

1. If a Lessee for Years of a Copyhold Manor leases a Copyhold by Cro. E. 459. Indenture for Years, yet this shall not destroy the Copyhold against him in Reversion; Because he has not the absolute Estate in the Seignory. D. 38 El. B. R. between Rusley and Conesly, per Curiam upon Evidence at Bar.

Cro. El. 459.
(bis) S. C.

2. So if Lessee for Life of such a Manor grants a Lease for Years by Indenture of a Copyhold, This shall not destroy the Copyhold as to him in Reversion for the Cause aforesaid. D. 38 El. B. R. between *Rusley and Conesby*, per Curiam upon Evidence.

3. So of Tenant in Tail of such Manor. D. 38 El. B. R. per Curiam.

4. So if Baron seised in Right of his Feme of a Copyhold Manor leases a Copyhold for Years by Indenture, This shall not destroy the Copyhold after the Death of the Baron as to the Feme and her Heirs. D. 38 El. B. R. between *Rusley and Conesby*, per Curiam upon Evidence at Bar.

S. C. Cro J.
313. It was
in Error
brought up-
on a Judg-
ment in a

5. If a Court by Prescription be granted and confirmed by the King by his Letters Patents, This does not destroy the Prescription; But the Stile of the Court may be by Prescription as before. B. 10 Ja. B. R. between *Goodjon and Duffield*. Adjudged.

Court of Pye-powders, and the Error assigned was in the Stile of the Court, which mentioned it to be held by Custom, and by Charter of the King granted and confirmed &c. which was urged to be repugnant; For that the Charter determines the Prescription; sed non allocatur; For they may use their Charters either as Confirmations or as Grants, or may claim those Liberties by Prescription notwithstanding such Charters. For, as Fleming said, Every Corporation uses in every King's Time to take a new Confirmation of their Liberties, or otherwise they ought to plead upon a Quo Warranto brought for the using their Liberties, or in Eyre, Allowance of them, else they are not justifiable. — Mo 830. pl. 1116 S. C. and the Court held, that the Prescription remains, unless it be altered by the Charter. — S. C. 2 Bullst. 21. and there 24. per Williams J. If the Charter be not contrary to the Prescription, it shall be good by way of Confirmation. And by Crook J. As to the holding the Court by Prescription and by Charter, it may be good if it be only by way of Confirmation. And Ibid. 25. S. P. But if the Stile had been with a (Vel) viz. by Prescription (or) by Charter, this had been clearly void. But where the Charter is in *Augmentation of the Custom by way of Addition* this is good, and may well be as a Grant and Confirmation, viz. a good Grant to hold as before, with an Addition thereunto as in the Charter is expressed, and in this Manner the Charter, Custom, and Prescription, may well stand together. — S. P. agreed by the Court in a Prescription for Common of Turbary. Mo. 818. pl. 1107. Hill. 9 Jac. in the Star Chamber, *Crew v. Vernon*.

The King by his Charter cannot oust the common People of their Right of Inheritance which they have in the Common Law. Br. Prescription, pl. 82. cites 8 H. 4. 19. per Gascoign. — As where the Mayor and Burgesses of Oxford have used Time out of Mind to have Consuance of Assise before them, and of other Pleas, and to hold Plea by Writ of Right before them, and after the King grants to them Consuance of Pleas by Charter, this is void for the Cause aforesaid. Ibid. — And it was said, That because they in Court of Record had accepted the Franchise by Charter of Consuance of Pleas, they had lost the Advantage to hold Plea by Writ of Right by their Usage. — S. P. that if a Man has Liberties by Prescription, and after takes thereof Grant of the King by Patent, this shall determine the Prescription; For Writing shall determine Contract and Matters in Fact. Br. Prescription, pl. 102. cites 33 H. 8. — S. P. Br. Lect. Stat. Limit. 39. — S. P. Palm. 494.

Action against an Abbot, where the Abbot and his Predecessors Time out of Mind have used to find a Chaplain in the Church of J. N. and after by Deed indented between them it was recited, where Variance was between them, for the finding of the said Chaplain, and that because the Abbot had used as above &c. the Abbot and Convent granted that they would find a Priest &c. and for not doing it the Action was brought, and made Title in the Court upon the Prescription; per Frowick Ch J. and Fisher, and Vavisor J's. the Prescription remains, because the Deed is in Affirmation of the Prescription, and of the same thing, and not contrariant, and the Deed recites the Prescription, so that it appears that the Intent of the Deed is to perform the Prescription, and not to take away the Prescription. Br. Prescription, pl. 35. cites 21 H. 7. 5.

Contra if the Grant had been contrary to the Prescription. Ibid. — As where the Prescription had been [for] one Day, and the Grant had been [for] 2 Days in a Week. Ibid. — But per Frowick, if the Prescription had been the Wednesday, and the Grant had been the Friday, the Grantee should have both. Ibid. — Br. Estoppel, pl. 210. cites S. C. — Br. Grants, pl. 56. cites S. C. — Fin. Law 8vo. 59. cites S. C. — Palm. 494. cites S. C. — Composition by Deed does not determine Prescription, if it agrees with the Prescription; and yet if A. has lost Common &c. and takes Grant by Patent of it of the King, or of any other by Deed, this determines the Prescription by Estoppel. D. 153. b. Marg. pl. 13. cites Faich. 38 Eliz. C. B. *Sheldon v. Hodges*. — And Br. N. C. pl. 206. 21 H. 7. 5.

D. 114.

Marg. pl. 61.
cites 28 Aff.
pl. 4.

6. A Title gained by Prescription cannot be destroyed by Interruption of the Possession for 10 or 20 Years. Co. L. 114. b.

7. But Unity of Possession of as high and perdurable Estate of the Thing claimed, and of the Land out of which it is claimed by Prescription, will destroy the Prescription; Because it is in the Right. Co. Litt. 114.

8. In Writ of Mesne, if upon Issue joined upon the Acquittal, Time out of Mind &c. the Jury find that the Grandfather of the Plaintiff was interred by one Agnes, and that Agnes and her Ancestors were acquitted by the Ancestors of the Defendant, Time out of Mind, but no Acquittal had been after this, yet the Plaintiff shall have Judgment upon this Verdict, because the Title of Acquittal being once vested by Prescription, cannot be taken away by a tortious Celler of late Time.

15. E. 3. Judgment. 133. 14. E. 3. ibidem 155. Co. Litt. 114. b.

9. If a Man, and all those whose Estate &c. have paid a Modus Decimandi in lieu of certain Tithes, and after by 20 Years last past he pays those Tithes in Kind; yet this does not destroy the Prescription; For it is not any Waiver of the Prescription; and notwithstanding the Payment of Tithes in Kind for this Time, yet the Prescription continues in Right. Mich. 43, 44. El. B. R. between *Nowell* Plaintiff, and *Hicks*, Vicar of Edmonton, adjudged in Prohibition. Co. Litt. 114. b.

10. If a Man has had a Common by Prescription, and takes a Lease of the Land, in which it is to be taken, for twenty Years, by which the Common * is suspended, yet after the Years ended he may claim the Common generally by Prescription; Because the Suspension was only to the Possession, and not to the Right, and the Inheritance of the Common always continued. Co. Litt. 114. b.

And when a Prescription or Custom

* Fol 272.

makes a Title of In-

heritance, the Party cannot alter or waive the same *en Pais*. Co. Litt. S. 178. pag. 114. b.

(U) In what Cases.

1. A Man shall never prescribe for what the Law gives him of Common Noy, 20 S.C. Right; For Usage is only where there is a Defect of Common Right. Cro. E. 792. Mich. 42 & 43 Eliz. C. B. Pill v. Towers.

2. A Vill cannot prescribe that Part of the Vill, or such a House in the Vill is Deviseable, or Gavelkind, where the rest is Guildable. Br. Prescription. pl. 53. cites 40 Aff. 27.

Br. Customs, pl. 37. cites S. C.

3. A Parson prescribed, that he and his Predecessors have been seised of the Tithes in such a Place, Time out of Mind; and admitted for a good Prescription, quod nota; and this where the Place was not in his Parish; For where it is in his Parish he need not prescribe. Br. Prescription, pl. 85. cites 14. H. 4. 17.

4. A Man may prescribe in Rent-charge, and to distrain for it when it is Arrear, which appears in the Case of Alsize of the Abbot of Stratford v. the Parson of Layton, for certain Thread of Cotton, Wax, Oil, Incense &c. to make Taper, and the Lamp in the Church of L. And there per Danby and Prisot it shall be intended Rent Service. Brooke says quere inde, where no Tenure is alledged. Br. Prescription, pl. 84. cites 35 H. 6. 6, 7.

5. Where a Man Justifies, or Intitles himself to Common Appendant, or to a Common Way, he need not to prescribe Time out of Mind; For these Words Common Way and Appendant imply Prescription Time out of Mind. Br. Prescription, pl. 39. cites 21 H. 7. 53. Per Coningsby and Brudnell Justices.

6. Nothing can be prescribed for, that cannot at this Day be raised by Grant; For the Law allows Prescriptions, only in Supply of the Loss of a Grant. Antient Grants happen to be lost many Times, and it would be hard that no Title could be made to Things that are in Grant, but by shewing of a Grant. Therefore upon Usage Temps dont &c. the Law

* S. P. Arg. 4 Rep. 86.

Pasch. 45.

Eliz. in Lut-

trel's Case.

—S. P. Skin.

229. Mich.

1 Jac. 2. B. R.

* presumes a Grant, and a lawful Beginning, and allows such Usage for a good

per Herbert
Ch. J. in the
Case of
James v.
Trotlop.

a good Title; but still it is but in Supply of the Loss of a Grant; And therefore for such Things as can have no lawful Beginning, nor be created at this Day by any Manner of Grant, or Reservation, or Deed that can be supposed, [no Prescription is good. Arg. Vent. 387. cites 11 H. 7. 13, 14. 13 H. 7. 16. per Keble 21 H. 7. 40.

5 P. Br. Pre-
scription pl
71. cites 8 E

7. Where the *Common Law will serve a Man*, he shall not prescribe, as to remove a Nuisance. Br. Lect. Stat. Limit. 43, 44.

4, 5. and that Prescription cannot be to distrain for a Rent-Service — So a Man cannot prescribe for *Heriot Custom*; because it is for his *own Goods*. Br. Lect. Stat. Limit. 45.

But he may
by Prescrip-
tion enlarge
its Authority,
as to hold
Plea above

8. A Man shall never prescribe to have a Court Baron within his Manor; Because it is of *Common Right*, and cannot be by Prescription; For it is incident to a Manor. Cro. E. 792. Mich. 42 & 43. Eliz. C. B. Pill v. Towers.

40 s. and the like Ibid. — And tho' the Prescription was laid to hold it before the Steward of the Manor, which is against Common Right, yet it is not good. Ibid.

(W) Failer of Prescription.

1. A Writ of Mesne was brought by the Tenant against his Lord upon an *Aquittal by Prescription*; Issue was joined upon the Prescription, and the Jury found, that the Defendant and his Ancestors, and they whose Estate the Defendant has, have acquitted the Ancestors of the Plaintiff, and those whose Estate he has, from Time whereof Memory &c. but not in the Time of the Plaintiff, nor of his Grandfather; the Plaintiff recovered by this Verdict; For the Effect of the Prescription is found. This Judgment was affirmed in Error. Qui hæret in Litera, hæret in Cortice. Jenk. 12. pl. 21. cites 14 E. 3. Fitzh. Judgment 155.

5. Upon a Prescription for a Modus decimandi, Way or Common, if the Verdict finds no Modus, Way, or Common for twenty or forty Years; but that before that, from Time beyond Memory, there was such Modus, Way, or Common; This Verdict finds for the Prescription. Jenk. 12. pl. 21.

So where a
Man pre-
scribes to
have Common
in grass, if
he proves that
he has Com-
mon appur-
tenant, it
does not
maintain the
Issue; for it is not the same Common. Cro. E. 563. Pasch. 39 Eliz. C. B. in Case of Lovelace v. Reynolds. — Cites 10 E. 4. 17.

3. A. has Common for 100 Sheep, as appurtenant to a House and 200 Acres of Land, and he purchases other Land, and has Common as appurtenant to that Land for 100 Sheep more; these are two distinct Commons, and in intitling himself, if he pleads Prescription intirely for a Common appurtenant to both Houses and Lands together for 200 Sheep, he has fail'd of his Prescription; for he must make two several Titles, and Prescription for 200 Sheep, and not join both in one. D. 164. pl. 59. 4 & 5 Mar. Basket v. Lord Mordaunt.

S. C. cited
by Popham,
Cro. E. 405.
in Case of
Gray v.
Fletcher,

4. One prescribed to have Pct-water out of such a River &c. and the Jury found, that he ought to have it, paying 6 d. every Year. It was adjudged, That he had failed in his Prescription; cited by Popham Ch. J. 5 Rep. 78. in Grey's Case, as a Devonshire Case.

where Popham said he was of Counsel in the Cause — S. C. cited by Popham, Win. 22. in Case of Empson v. Bathurst. — So in Trespass Quare clausum fregit, the Defendant prescribes to have Common in the Place &c. and it was found that the Defendant had used to have the Common, paying a Penny yearly to the Plaintiff; and if that Issue is found for or against the Defendant, was the Question; and adjudged against the Defendant. The Prescription is intire, and the Payment of the Penny is Parcel of it, and shall be intended as antient as the Common is. Noy 59. Lovelace v. Reynolds.

5. A. prescribes to grant an Office *Alicui personæ*, or *Cuiunque personæ* Idoneæ voluerit; this Prescription will not warrant a Grant to two Persons. Per Dyer. 3 Le. 33. Mich. 15 El. in C. B.

6. In Trespass the Defendant justified as in his Freehold; the Plaintiff made Title that the Locus in quo &c. was Parcel of the Manor of D. and demisable Time out of Mind &c. by Copy either in Fee, Tail, or for Lives &c. and that it was granted to the Plaintiff by Copy in Fee. This Prescription was travers'd. It was found, That the Lands had been Time out of Mind granted in Fee, but never in Tail: The whole Court held, that it was found for the Plaintiff, for the alleging that it had been demisable in Fee, in Tail, or for Lives, was but the Conveyance to his Title; and being found that it was demisable in Fee, and that it was demised in Fee, that is the Effect and Substance of his Title, which is sufficient; wherefore the Plaintiff had Judgment. Cro. E. 431. Mich. 37 & 38 Eliz. B. R. Doyle v. Wood.

Mo 359 pl.
490 adjudg-
ed. S. C. by
Name of
Dorley v.
Wood.

7. Where one prescribes to have Common appurtenant to his House and 20 Acres of Land, and it appears upon Evidence that he has but 18 Acres, or a less Parcel, yet he has not failed of his Prescription; but if he had 20 Acres, and 10 Acres are Freehold, and 10 Copyhold, he there fails of his Prescription; for he cannot make one Prescription for both. So it is in Part was Copyhold 100 Years since, but now is Freehold. Cro. E. 531. Mich. 38 & 39 Eliz. C. B. Gregory v. Hill.

In Replevin
Issue was
taken, whe-
ther J. M.
and all those
whose Estate
&c. had
used to have
Common for
all their

Beasts Levant and Couchant upon a Messuage 200 Acres of Land, 50 of Meadows, and 50 of Pasture in 4 Towns. The Jury find, that the said M. was seised of the same House, Land, Meadow and Pasture in the same 4 Towns, but that he had his Common, as belonging only to the Messuage, and 200 Acres of Land, 20 of Meadow, and 20 of Pasture in two of the Towns, and not to the rest; whereupon Judgment was given against the Plaintiff, as failing in his Prescription. Hob. 209. Mich. 15 Jac. Mitchell v. Mortimer.

8. If A. prescribes for Common for 100 Sheep, and the Jury find that he has Common for 100 Sheep and 6 Cows; this is no Failure of Prescription; Per Cur. But Per Walmley, if the Jury had found Common for 120 Sheep, and so more of the same Kind than he had alleg'd, he had failed. Cro. E. 722. Mich. 41 & 42 Eliz. B. R. Bushwood v. Bond.

S. P. Show.
347. Burgess
v. Steers -- 12
Mod. 25.
Bruges v
Seer. ———
So if a Man

prescribes that he has Common for Sheep only, and the Jury find Common for Sheep and Great Cattle, the Common is found for the Plaintiff Per Nichols. Brownl. 178. Trin. 12 Jac. in Case of Johnson v. Thorowgood. ——— So if one claims Common all the Times of the Year, when the Lands lie fallow, and when it is sown from such a Day unto &c. and his Cattle are taken in the Year when it is sown, or lies fallow, it is sufficient for the Plaintiff to prescribe for Common, either in the Year when it is sown, or when it lies fallow; and if the Jury find all the Common, it is sufficiently found for the Plaintiff. Ibid. ——— So if a Man hath Common from such a Day to such a Day, and the Cattle are taken at a Day between the Days, and he prescribes that he hath Common in the said Time, quo &c. and the Jury find he had Common before that Time the same Day and after, the Verdict is found for the Plaintiff; Per Nichols, and Warburton & Winch concessit. Ibid. ——— So where a Man prescribes for Common of Pasture for all his Sheep Levant and Couchant &c. it was found by Verdict that he had Common for Sheep and for all other Cattle &c. The Court held that the Action being only for impounding Sheep, the Plaintiff might well abridge the Prescription, as to them only, since nothing else was in Dispute; and the finding that he had Common for other Cattle, does not falsify his Prescription, but stands with it; and the Plaintiff had Judgment. Carth. 219. Pasch. 4 W. & M. B. R. Burgess v. Searle. ——— But if a Man prescribes for Common for all Cattle &c. at all Times in the Year, when it appears by the Evidence that Sheep were excepted for some Time of the Year; this is a Failure of the Prescription; therefore the Prescription ought to have been specially pleaded with this Exception. Resolved per Cur. Carth. 241. Pasch. 4 W. & M. The King v. Inhabitants of Hermitage. ——— So where the Defendant had prescribed for Common for all Sheep Levant and Couchant &c. and the Evidence was, that he had Common for his own Sheep only; it was objected that the Evidence did not maintain the Prescription; and of this Opinion was all the Court, because as the Prescription was laid, Sheep acted or otherwise Levant and Couchant ought to have Common, which is not warranted by the Evidence; for that is, that he has Common for his own Sheep only. Palm. 362. Earl of Devon v. Eyre.

9. Lord prescribes to distrain the Beasts of his Tenant for not doing Suit to his Court; if he distrains the Beasts of his Undertenant, this is not within the Prescription. Cro. E. 792. Mich. 42 & 43 Eliz. C. B. Pill v. Towers.

Nov. 20 Pell
v Towers.
S. C.

A Man prescribed to Tether *Equus* & *Bovæ* upon such a Baulk, this Prescription justifies his using it with *Mares* or *Cows*; for the Horse and the Ox are but Instances; and the Defendant is not tied up precisely to that Kind of Beasts in his Plea; for the Main Matter is, that the Grass there growing has been eaten by him. Clayt. 54 pl. 94. Sir Thomas Danby's Case.

Suggestion in a Prohibition was, that the Plaintiff Time out of Mind had paid a *Modus* of 2 s. for *Wool* and *Lambs*, but proves nothing of the *Wool*. And it was moved for a Consultation, because the Surmise is of a Joint Prescription and *Modus Decimandi* for *Wool* and *Lambs*, and no Proof being made of the *Wool*, he had failed in all. But per Cur. *There is a Difference between a Suggestion to have Prohibition, and a Prescription compriz'd in it, and a Prescription made in Defence, or by Way of Plea in any Original Action*; for in the last Case a Joint Prescription made of two Things, and Failure in one destroys all, because it is by *Way of Title*; but otherwise here, because this Prohibition is only to give Jurisdiction to the Court of King's Bench. Yelv. 55. Mich. 2 Jac. B. R. The Case of Prohibition.

10. In Replevin for taking one Horse, one Gelding, and two Cows &c. the Defendant avow'd for Damage feasant; Plaintiff in Bar prescribed in the Place where &c. for Common Appurtenant *Pro omnibus Equis, Vacuis &c.* Defendant demurr'd, because this Prescription did not maintain the Declaration; for nothing is said as to Geldings. And of that Opinion was Anderson; but the other Justices contra, and that the Prescription was good; for *Equus* is a general Term, and comprizes both Horses and Geldings, but not Mares. And the Court said, that all the Justices of Serjeant's-Inn, with whom they had conferr'd about it, except one, were of the same Opinion: Wherefore it was adjudged for the Plaintiff. Cro. E. 798. Mich. 42 & 43 Eliz. B. R. Stapleton v. Morse.

11. A Surmise for a Prohibition was, that Time out of Mind he had us'd to pay 4 s. per Annum in Discharge of all Tithes, and he proved that he us'd to pay 4 s. 6 d. per Annum; but because it appeared that no Tithes in Kind were due to the Parson, as he sued for, but that 'tis a *Modus*, tho' not in such Manner as the Plaintiff surmised, a Consultation could not be granted. Cro. E. 819. Pasch. 43 Eliz. B. R. Beal v. Webb.

12. In an Action of *Trespass* against G. he justifies by Reason of a Common appendant by Prescription in 500 Acres. And it was found by Verdict, that the Ancestor had released his Common in five of these Acres. And by the Court he had failed in Prescription. The Common by that is not extinct, because it is discharged to be Common by Act of Parliament for Failure of Prescription. Noy 67. Rotheram v. Green.—Cites D. 164. a. 284

13. If a Man prescribes, that every one who has 7 Lambs, or under, shall pay to the Parson a Halfpenny for every Lamb; and it is found accordingly; and further, that if he has more than 7, then the Parson shall have one, and shall pay the Parishioner an Halfpenny: He has fail'd in his Prescription per Cur. See Trial (K. g. 2.) pl. 30. Pasch. 7 Ja. 13. Castell v. Dodd.

Cro. J. 665. pl. 19. S. C. by Name of Holbach v. Warner.—2 Roll. Rep. 288. Holbetts v. Warner. S. C.

14. In Case the Plaintiff declared that he was seised of a Close called Haye next the River O. and that the Defendant was possess'd of another called Grove-Mead-Close on the other Side of the River, and that he and all the Possessors of Grove-Mead-Close Time out of Mind have used to make a Hedge on the Bank of the said River against the Water, which the Defendant had not done, by Reason whereof the Cattle pass'd over into the Plaintiff's Land from the other Side Ad damnum &c. After a Verdict for the Plaintiff, it was mov'd in Arrest of Judgment that the Prescription is ill, because it ought to have been either by Way of Custom in a Vill, or in a Person who may prescribe and aver Continuance, by Reason of his Estate; but Possessors or Occupiers are no such Persons; for that may be Possession for an Hour or less, which is no Ground for a Prescription; and for this Reason the Prescription was thought to be ill by Doderidge, Haughton and Chamberlain Justices, but Ley Ch. J. thought, that when Damages are only demanded by the Writ, it suffices to say, That the Possessor solet; but otherwise, where the Land itself is demanded,

manded, there he shall say *Debet & Solvet*; also where the Land it self is demanded, he ought to make the Tertenant a Party; but where the Demand is only to enjoy One's own Land, without Incumbrance by Reason of another's Land, it is sufficient to charge the Occupier, and the Possessor shall be Tenant to this Purpose. Palm. 331. Hill. 20 Jac. B. R. Holbedg v. Warner.

15. In Trespafs for Feeding his Pasture Ground &c. the Defendant And Ley Ch. prescribed, that he and all those whose Estate he had in the Manor of J. said, That Hatlop, had Common for all Sheep Levant and Couchant on the said Manor; upon the Trial the Evidence was, that this Manor was purchased by the Plaintiff of two Coparceners, and that he bought the Fee of one Moiety first, and at the same Time had a Lease of the other Moiety for Years, and afterwards purchased the Fee of that Moiety. It was mov'd that he had failed in his Prescription, because the Purchase of the Manor was by Parcels, and he has made one intire Prescription for the Common to the whole Manor, whereas he ought to have made a special Prescription, because the Parcels were once sever'd. And Ley Ch. J. and Doderidge J. were of this Opinion; for when by Act of the Party the Manor is once sever'd, there, tho' it be re-united, yet he ought to make a special Prescription to the Common; Otherwise, had it been sever'd by Act of Law, as Partition. Palm. 362. Hill. 20 Jac. B. R. Earl of Devon v. Eyre.

there is a Difference when the Severance is by Mortgages or three Parts; because there is not any severance or Partition, but a divided Moiety in the whole, and the Common runs throughout the Manor; so that the Common

may be intire; otherwise if it were by Meets and Bounds. Ibid.—And Doderidge J. held the Prescription ill, because it is uncertain whether it be Common Appendant or Appurtenant; but as to this Haughton held the Prescription good; for he held the Manor intire and re-united, and the Prescription shall be accordingly. Ibid.

16. In Trespafs the Defendant justified for Common from the carrying away of the Corn till it was reſowed with Grain. The Plaintiff rep'es that at the Time of the Trespafs supposed it was sowed with Turneps. The Opinion of the Court was, that it was not such Grain as was intended in the Prescription. Freem. Rep. 51. pl. 63. Mich. 1672. Bruerton v. Right. in C. B.

17. Trespafs. The Defendant justified by a Prescription for a Way to a certain Close; the Plaintiff replied, that he brought a Load of Hay along that Way that grew upon another Close; and the Defendant demurr'd, and adjudged against him; for if a Man hath a private Way to a Close, he shall not enlarge it to other Purposes. Freem. Rep. 247. pl. 259 Hill. 1677. Webiter v. Bach.

So where Case was brought for disturbing the Plaintiff in the Use of a Way, the Plaintiff de-

clared that he was seised in Fee of a Close called L. and of a Meadow called G. and so prescribed for a Way leading thro' a Place called B.-Lane to a Place called L.-Lane, and thence to his said Close called L. and that the Defendant had spoiled B.-Lane, with his Carts and Carriages; so that the Way was of no Use to the Plaintiff &c. The Defendant pleaded that W. V. was seised in Fee of a Close called B.-Close, and then lays a Prescription in the said W. V. for a Way through B.-Lane to the said Close, and so back again, and justified as Servant the going thither with his Carts &c. the Plaintiff in his Replication contended that W. V. was seised &c. and had a Way from the Lane to the Close, but that the Defendant, in using the said Way, did go beyond that Close to another Close called Warton Langdales, and so back again, the Defendant rejoined as before, without alleging any new Matter; and upon Demurrer to the Rejoinder, the whole Court resolved that the Defendant having prescribed to a Way only to B. Close, he cannot justify the going beyond it into the other Close of W. V. called W. L. Judgment was given, but not entered upon the Roll. Lutw. 111. 113. Trin. 7 W 3. Laughton v. Ward.—So where A. had a Way over B.'s Ground to Bl. Acre, and drove his Cattle over B.'s Ground to Bl. Acre, and thence to another Close lying beyond, it was urg'd, that when the Beasts were at Bl. Acre, the Defendant might drive them whether he would. But it was answered, That by this Means the Defendant might purchase 100 Acres adjoining to Bl. Acre, and so the Plaintiff would lose the Benefit of his Land, and that a Prescription presupposes a Grant, and ought to be continued according to its Original Creation. And to this the whole Court agreed, and Judgment was given accordingly for the Plaintiff. Mod. 190. Mich. 26 Car. 2. C. B. Howell v. King.

18. In Reſcous of 300 Sheep the Defendants pleaded, That the late Bishop of N. was seised in Fee of the Manor of N. and that the said Bishop, and his Predecessors, Time out of Mind, had Liberty of Foldage and a Fould-Camp for 300 Sheep in and upon the Plaintiff's Closes at cer-
tain

tain Times of the Year, and so justifies the putting in his Sheep, under a Lease from the Bishop of the said Faldage and Fould-Course, and that they were depasturing there &c. The Plaintiff in his Replication made Title to himself of the Closes, under a Grant from the Bishop, before the Lease made to the Defendants, and traversed the Prescription of the Liberty of Faldage and Fould-Course; The Defendants take Issue upon the Prescription, and had a Verdict; but it was moved in Arrest of Judgment, that a Prescription to have a Faldage and Fould-Course can never extend to give a Right of Common; because the Nature of Faldage is to have other Men's Sheep folded on my Lands; And therefore the Defendant having confessed the Trespass, and not made a good Justification, the Judgment was arrested. 2 Lutw. 1249. Trin. 3 Jac. 2. Sharpe v. Bechenowe.

19. In an Action on the Case for diverting a Water-course running to the Plaintiff's House, if, upon the general Issue pleaded, it had been proved, that the Water did not always run to the Plaintiff's House, but that it was usually dried up in the Summer, or drank up by the Cattle of the Defendant, (by whose Closes it passed, and where he had used to dig Holes to hold some Water for his Cattle) in such Case the Plaintiff would have failed of his Prescription. Carth. 117. Pasch. 2 W & M. B. R. Murgatroid v. Law.

20. Trespass Quare Clausum fregit; the Defendant pleaded, That D. P. was seised in Fee of a Mill and a Weare, and prescribed to have Ingress into the Plaintiff's Close to repair the said Weare when it was in Decay, and that he as Servant to him entered for the Purpose aforesaid. The Plaintiff in his Replication, confessed the Seisin, and the Custom to repair &c. but that T. S. had extended the Weare beyond the usual Place &c. upon which they were at Issue. See 2 Lutw. 1515. the Pleadings, but neither Judgment nor Argument. Pasch. 12 W. 3. C. B. Morgan v. Evans.

(X) Pleading a Prescription against a Prescription.

* S. P. per Cur. Freeman. Rep. 210 pl. 27. Mich. 16-6 in Case of Hickman v. Thorny.

1. **ONE** Prescription may be pleaded against another, where the one may stand with the other; as for Instance, Where a Copyholder of a Bishop prescribed, that all Copyholders within the Manor had been discharged of Tithes. But not where one Prescription is against another, as where one prescribes to have * Lights to his House, and the other prescribes to stop them up. Per Coke Ch. J. in the Case of Hughes v. Greene Godb. 183. pl. 262. cites the first Point as adjudged in the Case of Wright v. Wright.

S. P. per Cur. Freeman. Rep. 210 pl. 27 in Case of Hickman v. Thorny.

2. If A. has a Way over B's Land to his Franktenement by Prescription Time out of Mind &c. B. cannot allege a Prescription or Custom to stop the said Way; For it is a lawful Easement, and one Custom is as ancient as the other. 9 Rep. 58. b. Mich. 7 Jac. Aldred's Case.

3. The Plaintiff prescribed for a Fould-course for 300 Sheep, in 70 Acres of Land in B. every Year, from 14 Days after the Corn carried away till Lady-Day, within the Lands not sowed again; The Defendant pleaded, that there is a Custom within the said Town of B. that any one may inclose any Part of his Lands lying in the common Field. But the Plea in Bar was adjudged not good, because he does not traverse the Prescription in the Declaration; For a Prescription cannot be pleaded against a Prescription. But the Prescription alleged in the Count ought to be answered. Cro. C. 432. Hill. 11 Car. B. R. Spooner v. Day and Mason.

2 Mod. 104, 105. Trin.

4. The Defendant avows for Damage-feasant in Freehold. The Plaintiff replies, that he was seised of a House and two Acres of Land in B. and

and that he prescribes for Common belonging to the said House, and two Acres of Land in the Field of D. whereof the Locus in quo was Parcel. The Defendant rejoins, that there was a Custom in the said Fields, that any Owner of Lands might inclose any Parcel of Land lying together in the said Field, and exclude the Commoners in the said Field. The Plaintiff demurs and objects, that this Rejoinder is naught; because here is a Prescription pleaded against a Prescription, without traversing the first Prescription which is * not good, according to † *Alfred's Case*. 58. 1 Cro. 432. But the Court seemed to incline, that it may be well enough; for a particular Prescription may be controlled by a general Custom, though it cannot by another Prescription; For where a Custom is, which is of a greater Extent and Latitude than the Prescription, there it may be good without traversing the Prescription; for if one or two Men inclose, yet the Party has his Common in the Residue, and so it may stand with Prescription. The Defendant consented to pay Costs and amend. *Freem. Rep.* 210. pl. 217. Mich. 1676. *Sir William Hickman v. Thorny.*

of Land which he had elsewhere, for which reason the Defendant prayed to amend upon Payment of Costs. — *Freem. Rep.* 211. S. P. per Cur. — * S. P. Carth. 116. Pasch. 2 W. & M. B. R. in *Case of Murgatroid v. Law.* — † 9 Rep.

28 Car. 2. S. C. says, That Atkins J. doubted much of this Case, because the Defendant had pleaded this Custom to inclose in Bar of a Freeholder who had no Land in the Common Field, but prescribed to have such Right there as appendant to two Acres

(Y) Pleadings.

1. IT was presented, that J. S. by reason of his Tenure, had used to repair such a Bridge, and did not say, that he and those whose Estate he has &c. have used &c. And per Cur. the Presentment is good when he says, That by reason of his Tenure &c. he ought to repair &c. For this implies Title of Prescription. Suliard said, It is not good to say that he and his Ancestors have used &c. And per Fairfax, this is true; For he cannot be charged by the Act of his Ancestor without Profit to be taken by it; Contra of such Prescription against an Abbot; For the House and the Thing continues, but by reason of Tenure as above this implies a Profit. And this by the Justices. Br. Prescription, pl. 78. cites 21 E. 4. 38.

As to Bridges. Br. Presentment in Courts, pl. 18. cites S. C.

2. In Trespass the Use and Prescription of Common appurtenant was put in Issue, and yet this is in the Right, and the Action is in the Possession. Br. Prescription, pl. 89. cites 22 Aff. 63. and 30 Aff. 42. and 40 E. 3. 31. and 22 H. 6. 51. and 7 E. 4. 26. accordingly; and yet 40 E. 3. 10. he was put out of this Plea. And so by Finch in *Replevin*, where the Plaintiff justified for Common appendant. And he said, that the Prescription shall be traversed in *Quo Jure*, which is in the Right. Br. Prescription, pl. 89. cites 22 Aff. 63.

As to Common. See pl. 17. in Note, 18. 20 23 31

3. In Trespass, for trampling and feeding his Grass. The Defendant pleads in Bar, that the Borough of D. is an ancient Borough, and that the Defendant Tempore quo & diu antea was a Burgeis of the said Borough; that the Mayor and Burgeisses for themselves, and for every Burgeis of the said Corporation, had Common in the Place where, for all their Commonable Cattle, and that he put in the said Cattle to use his Common. Upon Demurrer it was objected by the Court, That the Defendant has prescribed for Common in *Gross Sans Nombre*, when there is no such Common; for if it should, then the Corporation might surcharge the Common, there being no Restraint to the Number of their Cattle; therefore he should have prescribed for all Cattle levant and couchant within the Vill; To which it was answered, That there is no Danger of such Common being surcharged, for in such Case the Lord or Owner of the Soil may distrain, but that this being Claim of Common in *Gross*, and not Appendant or Appurtenant, it had been improper to prescribe for

Mod. 6, -. pl. 20 S. C. by Name of the Corporation of Derby, but not said to be adjudged. — 2 Lev. 246. Hill 30 &c. 31 Car. 2. B. R. *Stables v. Dullen.* The Court held, that it might well be Common in *Gross*, and not appurtenant

nant to any Land, and cited 9 H. 6. 36. and 1 Rep. 8. As if a Man grants Common to a Mayor and Burgeſſes for all their Cattle in ſuch a Place it is good and in Groſs, and not appurtenant, and gave Judgment accordingly.——2 Jo. 115. S. C. by Name of *Staples v. Deller*, where the Preſcription was laid for the Beaſts of every Freeman of the Vill, and the Court held the Preſcription good, and Judgment accordingly, and cited 21 E. 4. 66.——2 Show. 45. S. C.——2 Keb. 527. pl. 26 S. C. adjournatur.——2 Keb. 550. pl. 28. S. C. and per Cur. this is a void Preſcription, yet may be good by way of Grant. But adjournatur——2 Keb. 570. S. C. adjudged——* 2 Sid. 87. Trin. 1658. *Stonesby v. Muſſenden*. S. P. but being after a Verdict it was held good——S. C. cited by Twiſden. Mod. 7. in Caſe of the Corporation of Derby.

Double.

See pl. 7. 44.

46.

Br Preſcrip-

tion. pl. 96.

cites S. C.——S. P. that it is double. Br. Double, pl. 136. cites 4 H. 6. 13.——S. P. Br. Preſcription, pl.

23. cites it as ſaid elſewhere,——But Br. Double, pl. 111. cites 13 H. 8. 15. contra.

But it ſeems, that Gift in Frankalmoigne After Time of Memory, and Preſcription ſhall be double. Br. Double, pl. 83. cites 39 H. 6. 29.

4. *Appendancy and Preſcription*, or Matter which proves Appendancy and Preſcription, ſhall be double. Br. Double, pl. 115. cites 11 H. 6. 11.

5. In Writ of *Meſne*, the Plaintiff counted, that Land is held of the Defendant by the Plaintiff Abbot of E. in Frankalmoigne, and that the Defendant and his Anceſtors whoſe Heir &c. have acquitted the Plaintiff and his Predeceſſors Time out of &c. and Iſſue taken upon the Preſcription; Exception was taken, that it was Jeofail by reaſon of the Doubleneſs, viz. the Frankalmoigne, and the Preſcription, where each of them is a good Cauſe of Acquittal. And per Choke, it is not double, becauſe the Iſſue is taken upon the one, viz. the Preſcription, and ſo he relies upon one to avoid the Doubleneſs. But per Priſor, it is not double, becauſe the Frankalmoigne is not ſufficient Cauſe by itſelf; For he does not ſhew the Gift in Frankalmoigne, and therefore it ſhall be taken a Gift given before Time of Memory, and then he ought to preſcribe in the Manner of Acquittal, and then the Preſcription is the Effect &c. and ſo ſingle; and after it was awarded good, and the Plaintiff recovered the Acquittal. Br. Double, pl. 83. cites 39 H. 6. 29.

Cro. E. 784. S. C.

6. If a Copyholder lays a Preſcription in the Biſhop of W. Lord of the Manor for himſelf and his Tenants to be diſcharged of Tithes, and then preſcribes for the Copyhold. Though here is a Preſcription upon a Preſcription one in the Copyholder to make his Eſtate good, and the other in the Lord to make his Diſcharge good, yet it was held that a Prohibition lay for the Copyholder. Yelv. 2 Paſch. 44 Eliz. B. R. Croucher v. Fryar.

As to Eſtovers.

* Br Pre-

ſcription, pl.

96. cites S.

C. But if

he ſays, that he and thoſe whoſe Eſtate &c. in a Houſe in C. have had Eſtovers in C. this is well; per Cott,

Paſton, and Martin; for this is not Appendancy.

7. In Treſpaſs the Defendant claimed Eſtovers appendant in the Place where &c. and preſcribed that he and all thoſe whoſe Eſtate &c. have had Eſtovers in the Place &c. appendant to ſuch a Houſe Time out of Mind, and admitted for good, viz. the Appendancy and Preſcription. Br. Preſcription, pl. 87. cites 21 E. 3. 40, 41.——But by 11 H. 6. 11. this is * Double, and with this agrees 4 H. 6. 13. Ibid.

How.

See pl. 5. 27.

S. P. Br. Ac-

tion turle

Caſe, pl. 47.

cites 12 H. 4. 7.

8 Preſcription in the Defendant, that he and all others *Tenuram illam prius habentes* ought and uſed to cleanſe ſuch a Ditch, and therefore the Writ was abated; For it ſhould be, that he and his Predeceſſors Time out of Mind, whoſe Eſtate the Defendant has &c. and becauſe not &c. therefore the Writ was abated. Br. Preſcription, pl. 16. cites 22 H. 4. 7.

[But it is miſcited in both Places, and ſhould be 12 H. 4. S. pl. 13.]

9. In *Annuity* the Plaintiff counted by Prescription; the Defendant *show'd*, that it commenc'd by *Composition*, therefore he ought to count upon the *Composition*. Judgment of the Court. And Per Newton and Patton, if the *Composition* be before *Time of Memory*, it cannot be try'd, and therefore the Count good; and if it commenc'd within *Time of Memory*, the Jury shall try it. Br. Prescription. pl. 22. cites 19 H. 6. 75.

Littleton said, That Anno 18 H. 6. in *Annuity* by Prescription, the Defendant, scilicet, a Spiritual Man, pleaded, that the Predecessor of the Defendant in the Time of E. 1. granted the Annuity to the Predecessor of the Plaintiff, and to his Successors, without Assent of the Chapter, Abbots &c. that the Plaintiff and his Predecessors were seized before this Time, Time out of Mind; for otherwise the Lay Gents will not inquire of longer Time than they themselves can remember; and therefore this Special Issue was taken and admitted good. Br. Prescription. pl. 5. cites 33 H. 6. 27.

10. In *Assise of Common Appendant*, the *Appendancy* is sufficient without Prescription; for this implies a Prescription. Br. Prescription. pl. 23. cites 22 H. 6. 10.

11. A Man shall not say in *Assise of Rent*, that he and all those whose Estate he has in a *Messuage* have had 20 *Shillings Rent* issuing out of the Land of the Defendant Time out of Mind, if he does not claim such as *Appendant* to the *Messuage*, or by Reason of the *Messuage*. Br. Prescription. pl. 26. cites 22 H. 6. 42.

12. In *Trespas* upon the Case, the Plaintiff prescrib'd in himself and his Predecessors to have *Leet* in D. with all Profits of it once in a Year, scilicet, Such a Day after Easter; and that he sent his Steward to hold *Leet* there such a Day &c. and the Defendant disturb'd him. The Defendant, by Protestation that he is Lord of the Vill, and that the Plaintiff has not any such *Leet* there, pro Placito says, that He and his Predecessors have had *Leet* there Time out of Mind, once in a Year, such a Day after Michaelmas; and that the Plaintiff has had *Leet* there such a Day after Easter Time out of Mind, and has used Time out of Mind to give Notice to the Bailiffs of the Defendant 15 Days before the *Leet*, and that he shall be with him, and that the Defendant shall have the Moiety of the Profits; and that if he will hold the *Leet* there in other Manner, then the Defendant and his Predecessors have used to disturb them &c. And because he did not give Warning by 15 Days &c. therefore he disturb'd &c. Danby J. thought the Prescription of the Disturbance is void, for he has not alleg'd that he ever disturb'd him; and the Prescription cannot be without Use, and Use cannot be without Matter in Fact, and he has not alleg'd any Disturbance done in Fact; Quære, for it was well debated and adjourn'd without Judgment, but none spoke to the Prescription but Danby. Br. Prescription. pl. 41. cites 38 H. 6. 16.

13. If a Man prescribes to have *Rent* with *Distress*, it is no Plea, that the *Rent* has been paid all Times by Coertion of *Distress*, because the *Rent* has been continued Time out of Mind, and cannot be avoided by Coertion, tho' it commenced by Tort; by all the Justices. Br. Prescription. pl. 75. cites 13 E. 4. 6.

Replevin &c. the Defendant avowed, for that he was seized in Fee of the Rent,

and that he and all &c. had used to distrain for it in the said Land &c. It was held clearly per Anderson and Glanville, that the Avowry was not good; for he prescribes in the *Distress*, and not in the *Rent* itself. Cro. Eliz. 675. Patch. 41 Eliz. C. B. Stephens v. Lewis.

14. The Sheriff of W. prescrib'd in 5 *Shillings Rent* in such a Vill for all Sheriffs &c. and it was held no Prescription; for he is only as a Tenant at Will, by which he prescrib'd, that it has been used Time out of Mind, as above, and that they have used to distrain for it. And this was held good, and so the Issue shall be taken upon the Usage. Per Littleton. Br. Prescription. pl. 28. cites 15 E. 4. 29.

And the Prescription shall be that the King and his Progenitors have had, Time out of Mind, 5 s.

of the Vill &c. to the Use of him who shall be Sheriff for the Time. Ibid.

15. If a Man will allege a Prescription or Custom, he ought to set forth, That it was put in Use within Time of Memory. Per Godfrey Godb. 55. Mich. 28 & 29 Eliz. in Joyce's Case.

16. If one prescribes *to have the Dying of the Clothes in such a Place*, he ought here of Necessity especially to aver, *that he is sufficient* for to dye them; as the Custom which one hath at Torcetter, to have a *Common Bakehouse*, he ought to aver, *that his Oven there is sufficient to serve them all*; and this was *Sir George Farmer's Case v. Brook*. Per Coke Ch. Just. 3 Bulst. 61. Mich. 32 & 33 Eliz. in *B. R. Ball v. Collins*.

Cro. E. 390.

Pasch. 39 El.

B. R. Pearce

v. Bacon. S.

C. — In

Trespas for *Taking Turf in the Waste* of the Plaintiff; the Defendant justified, for that Time out of Mind *Utitatum fuit*, that every Tenant for Years of an ancient Tenement in the said Manor had Common of Turbary in the Waste &c. and that he was possessed of an ancient Tenement and Close &c. which was leased to him for a certain Term of Years, with all Commons thereunto appertaining. But adjudg'd, that tho' this Common was appurtenant to the Messuage and Close, yet the Lessee cannot have it by this Prescription; for an *Utiage ought to be perpetual*, which cannot be in this Case, because it is interrupted by every new Lease; besides, Lessee for Years can never have Right to a Common by Prescription; and an Estate cannot be good 1 Bulst. 17. Hill. 7 Jac. B. R. *Grimes v. Peacock* — 2 Brownl. 222 S. C. Argu'd, but adjourn'd.

18. In Trespas for chasing Sheep &c. the Defendant justified, for that the Place where &c. was the Freehold of John Theed; The Plaintiff replied, and prescrib'd for *Common for 60 Sheep Levant and Couchant upon his Tenements*; and avers, that he put in 60 Sheep &c. to eat the Grass and use the Common &c. The Defendant travers'd the Prescription, which was found for the Plaintiff; and it was mov'd in Arrest of Judgment, that the Plaintiff *had not alleg'd that the 60 Sheep which he put in the Place where &c. were *levant and couchant upon his Tenements*; and if they were not, then the Defendant might lawfully distrain them Damage feasant; sed non Allocatur; for the Defendant might have taken Advantage of it by a Demurrer or a Rejoinder; but when he rejoind'd and travers'd the Prescription, which is found against him, the *Want of an Averment is aided by the Statute of Jeofails*. Saund. 226. Pasch. 21 C. and says, that the Gift

* Cro. J. 44.

Mich. 2 Jac.

B. R. France

v. Tringer.

S. P. Ad-

judg'd. —

G. Hist. of

C. B. 113,

114 cites S.

C. and says,

that the Gift

of the Bar is the Right to burthen the Plaintiff's Soil; and when the Plaintiff takes Issue on that, and controverts that Right, he admits there was not any Trespas in the Case, and that the Defendant had such a Right. He likewise admits, that the Defendant has brought himself within that Right, because it would have been Nugatory to have denied that Right of Prescription, which, if it had been found, the Plaintiff had not brought himself within it; and therefore the Traverse of such Gift of the Bar is waved, and an Admittance of such collateral Circumstances.

Saund. 350.

S. C. And

the Court

seem'd to in-

cline that

the Plea was

good.

19. In Replevin, the Plaintiff prescrib'd, setting forth, *that there are divers Freehold and Copyhold Tenements in the Manor, and that he is seised of a Freehold Tenement, and that he and the other Freeholders, and all those whose Estate they have, Time out of Mind, simul-cum the Copyholders have had solam & separalem Pasturam* of the said Place, *Omni Anno Omni Tempore Anni*; and then he pleads a Custom, *that the Copyholders Simul-cum the Freeholders Time out of Mind have had solam & separalem Pasturam Omni Anno Omni Tempore Anni &c.* The Plaintiff demurr'd generally; Exception was taken, 1st, That laying the Prescription in himself and all the Freeholders is not good; for that every one ought to prescribe by himself, and not he for himself and all the other Freeholders. 2dly, He prescrib'd for himself and all the Freeholders, Simul-cum the Copyholders, and yet he laid a Custom for the Copyholders, Simul-cum the Freeholders, and so mix'd a Prescription and a Custom together, which cannot be, for the one is laid in the Person and the other in the Place; but that he ought to have said, That he and all those whose Estate he has simul-cum the Freeholders and the Copyholders Time out of Mind, have had &c. But the Court over-ruled the Exceptions upon a Case of *Kettleborough v. Wells*, Trin. 1654. where such Plead-

ing

ing was adjudg'd good. Lev. 268, 269. Trin. 21 Car. 2. B. R. Potter v. North.

20. In *Trespafs for breaking his Close in L. in D.* on the 1st of April, 21 Car. 2. the Defendant pleaded a Prescription for Common, and justified the putting in his Cattle on the First of August, 20 Car. 2. *quæ est eadem Transgressio* &c. and upon Demurrer it was objected to this Plea, that the Plaintiff had laid the Trespafs to be done on the First of April 21 Car. 2. and the Defendant justified on the First of August 20 Car. which varies from the Time in which the Trespafs was laid in the Declaration, whereas he ought to justify on that very Time; but it was adjudg'd, that the Plea was good in Subtance, because the Defendant had averr'd, that it is *Eadem Transgressio* of which the Plaintiff complained; and the Plaintiff having demurred generally to it, this is but Matter of Form, and not Subtance, of which no Advantage can be taken upon a general Demurrer. And the Defendant had Judgment. 2 Saund. 4. Hill. 21 & 22 Car. 2. B. R. Mellor v. Walker.

21. Where one pleaded, that *Seisitus fuit of an House and 20 Acres of Land*, this, it was said, must be intended of a Fee Simple; and when he afterwards says, *De Jure habere debuisset Common*, those Words amount to a Prescription. Arg. 4 Mod. 420. in the Case of *Strode v. Byrt*, cites Pasch. 33 Car. 2. B. R. Rot. 109. Brooking v. Bond.

22. The Plaintiffs intitule themselves to each of them a Mill, and declare that they had used to repair the said Mills, and prescribe, that all the Inhabitants within the Manor had used to grind omne Frumentum that they spent &c. at their Mills, or at the Mill of one of them. Two Exceptions were taken on the Declaration by the Court; for as this Prescription is alleg'd, possibly one of the Plaintiffs might have no Cause for Action; for if A. has an ancient Mill where the Inhabitants used to grind, and B. erects a new Mill in the same Town, it may be truly said, that the Inhabitants are to grind at the Mills of A. and B. or the Mill of one of them, altho' they were not oblig'd at all to grind at the Mill of B. per Hale Ch. J. but to intitule them both it ought to be alleg'd, that all the Corn not ground at the Mill of A. used to be ground at the Mill of B. and that all the Corn not ground at the Mill of B. used to be ground at the Mill of A. and then both had been intituled. (2d Exception) They prescribe to grind omne Frumentum spent in their Houses, which is not good; for it may be, they spent Corn and never ground it all; as what they give their Pigs and Hens, and make Frumenty with, which they shall not be obliged to grind; but it should have been said, *Omnia Grana molienda*; and Twissden cited *Ayliffe and Charlesworth's Case*; where the Prescription was adjudg'd bad for this Point. Judgment for the Defendant. Freem. Rep. 20. pl. 22. Mich. 1671. Harvey and Corydon v. Willoughby, in C. B.

23. A Man bath an Acre of Freehold in a Great Field, to which Common doth belong, now he cannot in his Prescription lay it, that he hath Common in the whole Field, but in such a Part of the Field, as in that towards the East Part or West Part of the Field; because, if otherwise, he should then extend his Prescription to his own Land, which would not be good; and because he had here laid his Prescription to the whole Field, he was nonsuited &c. Clayt. 19. pl. 32. Conyers v. Jackson.

Freem. Rep. 210 cites Sir Miles Corbet's Case 7 Rep. 5 That a Man had Lands lying intermix'd in a Common

Field, where he prescrib'd for Common; and he laid his Prescription in all the Field except his own Lands. The Court agreed that Case, and said, That that Judgment was affirm'd for good Law in the Case between the Lord Clare and Sir Thomas Williamson; which was the same Case.

34. In Trespafs for Breaking his Close, and Fishing in his several Fishery; the Defendant, as to the Close, pleaded that the Earl of Warwick was seised in Fee of the Manor of H. whereof one Acre covered with Water was Parcel and contiguous to the said Close, and so prescribes to have a necessary Easement to catch Fish in the said Water, and for that Purpose to enter into the said Close and spread Nets &c. That the

Earl granted this Manor and Close to King E. 6. from whom it came to Queen Mary, who granted it to T. Lucy in Fee, with all Ways, Emoluments, Commodities and Hereditaments &c. and so derives a Title to himself from the said T. Lucy, and justifies the Entry in his own Right &c. Upon Demurrer it was objected, That this Plea was ill, because the Defendant has prescribed for a necessary Easement, but *does not say that it was necessary for Catching Fish*; It was answered, That the Word *Easement* is known in Law, it is a *Genus* to several Species of Liberties, which one may have in the Soil of another, without claiming any Interest in the Land itself. And per Cur. it is a known Term in Law; But here the Thing itself is set forth, (viz.) to Catch Fish &c. and certainly no Instance can be given of a Prescription for such a Liberty, by such a Word or Name; therefore a Rule was made to set the Prescription right, and try the Merits. 4 Mod. 362. Mich. 6 W. & M. B. R. Peers v. Lucy.

25. *De Antiquo* in a Count is a Prescription. Per Holt. Ch. J. Skin. 621. in the Case of Stroud v. Birt.

Allege
Seisin.

26. Where one intitles himself to a *Duty and Remedy* by Prescription, he must *set out his Remedy wholly*; Indeed if you prescribe to a *Duty*, you may have *Debt* for it without Prescription, but you cannot *distrain* without it; And if you prescribe for a *Duty and Distress*, you cannot by virtue thereof *sell*, without a Prescription for selling too; because a Prescription may be to *distrain* without selling. Per Holt. 12 Mod. 329.

It is a good Title in Assise of Rent that the Plaintiff and all seised of the Manor of D. have been seised of the Rent time out of Mind, as Parcel of the Manor. Per Hull quod Hank

27. A Man, in *Replevin*, prescribed that the Plaintiff and his Ancestors, and those whose Estate he has, have had *Common* in his Land where &c. and that the Plaintiff and his Ancestors have used to pay 10 s. Rent per Ann. to him and his Ancestors for the same *Common*, and so avowed for 10 s. and good, Notwithstanding that he did not prescribe that he and his Ancestors &c. have had the Rent, but that the other has paid it, and is all one, per Cur. quod nota, and this is not Rent, but Annuity; For he cannot have Assise; Because he cannot have Rent out of his own Land, and yet a good Prescription per Cur. But he ought to allege *Seisin* per Cur. and so see Prescription to *distrain* in his own Land. Br. Prescription, pl. 1. cites 26 H. 8. 5.

concessit. Br. Prescription pl. 16. cites * 22 H. 4. 7. — * It should be 12 H. 4. 8. pl. 15.

28. Action upon the Case, That whereas betwixt the Plaintiff's House and the Defendant's, there was a little *Piece of Ground*, called a *Twit-chell*, upon which he, and all those whose Estate he hath, had used to set their Ladders to repair their House, and says, that he *Possessionatus est* of the said House &c. and that the Defendant erected a Wall there, Per quod he could not set his Ladder; And per Curiam, the Plaintiff hath not well prescribed, for he hath laid the Prescription in himself, and those whose Estate he hath, and says, that he *Possessionatus fuit*, which cannot be intended but of a particular Estate, as a Lease for Years, and a Lessee ought not to prescribe in his own Name: Rainford said If he had said *Seisitus* in Feodo, or else it might have been but an Estate for Life; But if he had laid it in the Occupiers, perhaps it might have been good, being but an Easement. Freem. Rep. 357. pl. 453. Mich. 1673. Matches v. Broughton.

29. Plaintiff declared, That he was seised of a Tenement, and that he and all those whose Estate &c. had used to fetch *Pot-Water* from the Defendant's Close; Issue was taken upon the Prescription; and found for the Plaintiff; But the Court held the Declaration was ill, because the Plaintiff did not set forth that he was seised in Fee; For a Prescription cannot be annexed to any thing but to an Estate in Fee; therefore this is a Defect in Substance, and not aided by a Verdict. And the Judgment was arrested. 2 Mod. 318. Tr. 30 Car. 2. B. R. Scoble v. Skelton.

2 Show. 195. pl. 196 Pasch. 34. Car. 2 B. R. S. C. Stay'd till moved on the other Side. — S. C. that Judgment was arrested

for not shewing How seised ; For unless he was seised in Fee, he could not prescribe. And upon being moved again by Tremain, the Court held their former Opinion. Skin. 36. pl. 3. Pasch. 34. Car. 2. B. R.

30. In case the Plaintiff declared, That the Office of Post-master was an *ancient Office*, to which several Fees were belonging for carrying Letters ; but did not say they had belonged Time out of Mind ; And it was held well enough, for being alledged to be an antient Office, and that such Fees did belong to it, he need not prescribe for them. Latch. 87. Lord Stanhope, v. Ecquester.

Not saying
Time out of
Mind

31. One prescribed, That all the Occupiers of B *Habuerunt & habere confueverant Common* in such a Town in C. *Ratione Vicinagii*, but did not allege Time out of Mind ; which the Court held to be ill, because the Prescription is the Foundation for Common of Vicinage ; but 'tis otherwise, where a Man claims *Common Appendant* ; for in such Case the Plea would be * double, if the Defendant prescribed to it. Latch. 161. Jenkins's Case.

* Orig is
(doubt)

32. Trespass for taking and carrying away his Cheeses, Defendant justified for that he was seised in Fee of Chipping Sudbury, and of an *ancient Market* there held every Thursday, and that he and all those whose Estates he hath, had used to have a Penny for every Hundred of Cheese exposed to Sale in the Market, in the Name of the *Pitching Penny* ; And upon Demurrer, to distrain &c. And that a Hundred of Cheese being exposed to Sale, and 1 d. being demanded and not paid, he distrained. Upon Demurrer it was objected, That the Defendant had not made a sufficient Title, not having laid an Usage Time out of Mind, but only by Que Estate he hath, and the whole Court was of that Opinion. And Judgment for the Plaintiff. 2 Jo. 227. Mich. 34. Car. 2. B. R. Goodwin v. Brooks.

33. Case, and declared, That he was seised of such Lands &c. And that he and all those, whose Estate he had *Simul-cum quibusdam aliis tenentibus*, Tenants by Copy of Court-Roll, *de Manerio in J. Time out of Mind* have had *solum Pasturam* in such a Close, and the Defendant had disturbed him ; and upon Demurrer, it was objected, to the Prescription, that (*cum aliis Tenentibus*) is *uncertain*, both as to their Kind and Number ; And that *de Manerio in J.* is uncertain also what Manor is intended, and every Manor has a Name, and there may be several Manors in one Vill ; For which Reasons the Court held the Declaration ill, and gave Judgment for the Defendant. 2. Lev. 178. Mich. 28. Car. 2. B. R. Underwood v. Saunders.

Uncertain.

34. The Declaration was, That he was seised of a *Messuage or Tenement*, and that He and All &c. by Himself or Servants had fetched Water &c. Exception was taken that *Messuage (Or) Tenement* is uncertain, and so (by himself or Servants) but *Non Allocatur*. Skin. 36. pl. 3. Pasch. 34. Car. 2. B. R. Scobell v. Skelton.

2 Show 195.
S. C. & S. P.
as to Mes-
suage (or)
Tenement,
was held

well enough ; Because every Messuage is a Tenement. And that the other Exception was, because it was for Him and his Servants, whereas his Servants had no Estate ; but held well enough.

35. In an Action for Toll, a Prescription was laid to have a *Quart de quolibet Sacco*, Angl^r, a Sack of Corn, for Toll ; and moved in Arrest of Judgment, because a Sack was a Measure not known in Law, and therefore it ought to have been explained, or otherwise it is uncertain ; But Dolbyn said, a Sack was a Measure very well known in that County, and was there as certain as a Buttel ; and so he and Jones disallowed the Exception, *Ceteris absentibus*. Freem. Rep. 483. pl. 662. Mich. 1680. Wincombe v. Colborne.

36. Case &c. wherein the Plaintiff declared, That the Provost and Scholars of King's College in Cambridge were seised in Fee of a *Messuage* in Grancester in C. and 260 Acres of arable Land, lying in the Common Fields of Grancester aforesaid, and that they, and all those whose Estate they had in the said Tenements, have Time out of Mind &c. for themselves, their Farmers

* The Ch. J. said here that the Prescription is laid to have the Sheep going infra Communes Campos & Territoria de Grancester, to be folded, and Territoria is a Word unknown in the Law, so no Certainty in the Prescription. Ibid.

Farmers &c. had *Libertatem Faldagii* of all Sheep (except &c. going and depasturing on the Common Fields & * *Territoria* of Grancester upon the said 160 Acres, and sets forth a Title under the said Provoit &c. and that the Defendant did put in 200 Sheep into the said Common Fields of G. and depastured them there for a certain Time, but them, in or upon the said 160 Acres or any Part thereof, *Minime faldavit sicut ipse debuit, nec permisit ipsum querentem habere Beneficium Faldagii earundem*, and shews how the Defendant was not within the Exception. The Court held the Declaration insufficient, for the Uncertainty of the Word *Faldagium*; And if the Word did imply as the Plaintiff had insisted, it should have been set forth, viz. That the Plaintiff had set up a Fold where the Sheep were to have been folded, he being to do the first Act; And *sicut debuit* is not sufficient here for the Obscurity of the Word (*Faldavit*) to that it appears not to the Court what ought to have been done on the Defendant's Part; And to say, *Non permisit* the Plaintiff *Habere Beneficium Faldagii* was not good, without shewing how he disturbed him as 8 Co. in **Francis's Case**. But Nota that was upon Demurrer, but here it is not said *Non permisit* the Plaintiff *Habere Faldagium*, or *Non permisit eum faldare*, but *Non habere Beneficium Faldagii*; So that it was not certain what was meant for the Sheep might be Folded, and yet he might be Deprived of the Benefit of the Foldage; And for these Reasons the Judgment was stay'd by the Opinion of the whole Court. 2 Vent. 138. Hill. 1 W. & M. C. B. Dickman v. Allen.

In whom.

37. In Trespass, the Defendant justify'd in F. because he, and all his Predecessors, and all their Tenants at Will of the Manor of D. have had Common of Turbary in the Place where &c. Time out of Mind, and no Prescription. Per Cur. For the Lord cannot prescribe in himself and his Tenants at Will; For Tenants at Will cannot prescribe; but the Lord shall prescribe in himself and his Predecessors, or his Ancestors, or those whose Estate &c. for them and their Tenants at Will; and this is well. Note the Diversity. Br. Prescription, pl. 3. cites 9 H. 6. 62.

Traverse, see pl. 2. & 18.

Br. Prescription, pl. 18. cites S. C. And says, [somewhat obscurely] Quod miror; For it seems that a Man may prescribe to hold Pleas, but not to have Conuſance of Pleas, but shall shew Charter.

38. Trespass against several, supposing the Trespass to be done in B. and the Bailiff of C. demanded Conuſance of the Plea, because they and their Predecessors Time out of Mind have had Conuſance of Pleas in B. by which &c. and the Title of the Prescription traversed. 7 H. 6. 45. b. pl. 287.

39. In Trespass, the Defendant prescribed in him and his Ancestors, and in those whose Estate he has in such a House and Land in D. to be Keeper of the Wood of D. taking yearly of every Commoner there 12 d. The Defendant pleaded Grant to him for a certain Time expired, and traversed the Prescription, and well, tho' it was in Trespass, and the Prescription admitted in him and his Ancestors, and in those whose Estate, therefore it is not double, as it seems. Br. Prescription, pl. 95. cites 11 H. 6. 2.

40. In Trespass the Defendant in *Jure Uxoris* prescribed, that she and her Ancestor, whose Heir &c. have had Rent of 20 s. per Annum Time out of Mind of the Premises, and that they have used to distrain for it when it was Arrear, by which he took as Distress for so much Arrear. The Plaintiff said, that the Feme and her Ancestors have not been seised of this Rent Time out of Mind; Prist; and the others econtra &c. and to see Prescription traversed in Trespass, and yet this goes to the Right, but there are several Cases of this in the Book of Entry of Pleas. Br. Prescription, pl. 20. cites 19 H. 6. 34.

41. Presentment was, that the Prior of D. ought to sever such a Way in D. by reason of his Land in D. and that he and his Predecessors &c. have used to sever it, and it is not held double, and therefore the Defendant was compelled to traverse both the Points; Quod Nota. Br. Double, pl. 106. cites 21 E. 4. 73.

42. Where

42. Where Prescription is *alleged in a Rent or Common*, and the other *alleges Unity of Possession* of the Rent or Common, and the Land out of which &c. this is a good Plea *without traversing the Continuance of the Prescription*; Per Hufley. Br. Traverse per &c. pl. 185. cites 5 H. 7. 11, 12.

43. In Trespafs Quare Clausum fregit in C. the Defendant pleaded, that the Manor of C. is an ancient Manor, and that within the said Manor is a Custom, that *every Tenant habere a Way* over the Place where &c. Upon which the Plaintiff demurr'd; and Judgment was given for the Plaintiff that the Plea is ill. Sid. 237. Hill. 16 & 17 Car. 2. B. R. Cornelius v. Taylor.

Ways.

44. In *Affise of Rent*, he who prescribes in him and his Ancestors, and in those whose Estate he has, ought to shew Deed of the Rent; for *Que Estate cannot be of a Rent without Deed*, by which the Plaintiff shewed Deed of Grant of the Rent to his Ancestor, but did not shew Deed of Commencement of the Rent, and therefore ill by the best Opinion; For a Man may prescribe in him and his Ancestors &c. without shewing Deed, but not in a Que Estate of a Thing which cannot be granted without Deed, unless he shews Deed thereof; *Contra of Acquittal* in him and those whose Estate the Lord has in the Seigniori, or of Common Appendant, or Estovers appendant &c. there he may prescribe by Que Estate without shewing Deed. Br. Prescription, pl. 29. cites 24 E. 3. 23. 39.

Without shewing Deed.
S. P. Br. Prescription, pl. 47. cites 22 Aff. 53.—
But a Man may prescribe in Rent Parcel of or Appendant to a Manor without shewing Specialty. Br.

Prescription, pl. 47.—*And in Rent reserved for equality of Partition.* Br. Prescription, pl. 47.—*And the Reason why Rent may be prescribed for without shewing Deed*, where it is Parcel or Appendant to the Manor or Land, is, *because the Manor or Land may pass by Livery without Deed*, and then the Rent passes with it as annexed to it. Br. Prescription, pl. 47. cites 22 Aff. 5.—Br. Monfrans, pl. 91. cites S. C.—But Br. Prescription, pl. 48. cites 23 Aff. 6. *Contra* that in *Affise of Rent* the Plaintiff prescribed in him and his Ancestors, and in those whose Estate his Ancestors had Time out of Mind, and it was adjudged a good Title without shewing Specialty of the Que Estate or otherwise, and the same Judgment affirmed in B. R. in Writ of Error. Br. Prescription, pl. 43. cites 23 Aff. 6.—Br. Monfrans, pl. 94. cites S. C.

45. A Man cannot prescribe in him and his Predecessors, and in all those whose Estate he has in a Hundred, without shewing Deed of the Que Estate; Per Hill. Br. Prescription, pl. 15. cites 11 H. 4. 15.

(Z) Equity.

1. THE Constable of the Castle of Gloucester exhibited a Bill against a Brewer, setting forth, that he and all his Predecessors Constables &c. have used to have 12 s. of every Brewer within the City of Gloucester, and that the Defendant refused to pay it. And Noy demurred because no Consideration was laid in the Bill, by which it might arise and commence. But the Bill was ruled by the Court to be good. Litt. R. 103. Trin. 4 Car. in the Exchequer. The Constable of the Castle of Gloucester v. A Brewer.

2. The Lieutenant of the Tower of London exhibited a Bill as to certain Wine claimed by him of every Ship laden with it, and he was relieved. And it is sufficient to maintain the Prescription, that it might have a lawful Commencement though now the Cause and Consideration is not known. For in many Cases the Consideration is transitory, as Payment of such a Sum &c. Litt. R. 103.

3. It is a common Case in Chancery, where a Man has used to have a Rent out of such a Manor Time out of Mind, but knows not by whom he has it, or what Rent it is, whether Rent-service, Rent-charge &c. or

for what he has it, but only that he has used to have it, if it be detained, to sue there for it : Per Walters. Litt. R. 103. in the Case of the Constable of the Castle of Gloucester v. A Brewer.

For more of Prescription in General, See *Chimin or Ways, Common, Custom, Que Estate*, and other proper Titles.



[Presentation,] Parson, Patron.

(A) Vicarage. [*Who might create a Vicarage.*]

Watf. Comp. Inc. Svo. 344. cap. 17. —A Vicarage cannot be created without the Assent of the Patron ; per Dodderidge : Roll. R. 464. Trin. 14 Jac. in Cam. Scacc. in Case of Colt v. Glover.

1. **T**HE Ordinary cannot create a Vicarage without the Assent of the Patron. 16 E. 3. Quare Impedit 145. 5 E. 2. Quare Impedit 195. per Past. 16 E. 3. Nonstrans de faits 166. per Past.

2. The Parson, Patron, and Ordinary, may create a Vicarage without the Assent of the King, though the Vicar shall be a Corporation ; For this is a Corporation by the Common Law. Contra. 17 E. 3. 51. Admitted.

Watf. Comp. Inc. Svo. 345. cap. 17. —If the Appropriation be duly made when the Church is full, he supposes a Vicarage may then be created, at least if the Incumbent consent ; But not so as to bind or lessen the Profits of the present Incumbent ; However, it is clear, that the Patron and Ordinary alone may create a Vicarage. Cites 8 R. 2. Annuity 53.

3. A Parson appropriate and the Ordinary might, before the Statute of Dissolutions, create a Vicarage ; For the Parson was Parson and Patron. 8 R. 2. Annuity 53. 17 E. 3. 51.

Watf. Comp. Inc. Svo. 345. cap. 17. —

4. If a Dean and Chapter, or other such Corporation, as Nuns &c. had Parsons appropriate, they might with the Ordinary create a Vicarage, though they themselves had not the Cure of Souls. Com. Grendon. 497.

5. In Time of Vacation, the Patron of the Parsonage and the Ordinary may create a Vicarage. 8 R. 2. Annuity 53. per Belk.

6. The Patron *by Lapse*, tho' it be the King himself, is not sufficient Patron to assent ; for the Patron by Lapse *has no Interest*, but a necessary Function to present one to serve the Cure. Per Hobart Ch. J. Mo. 903. pl. 1262. Mich. 10 Jac. in Case of Colt v. Glover.

* There is no Letter to this in Roll. and this Plea is there marked (6). Endowment

[B.] Vicarage. *Endowment.* [*By whom &c.*]

[1.] 40 E. 3. 28. **A**N Endowment is pleaded to be by Parson and Ordinary.

shall not be of a Vicarage without the Assent of the Patron. Per Dodderidge J. Mo. 900. Mich. 10 Jac. C. B. in Case of Colt v. Glover. Cites 5 E. 2. Quare Impedit 165.

* (C.)

* [C.] † Vicar. Endowment.

* There is
no Letter to
this in Roll

1. If a Vicar had used by Prescription, Time whereof Memory ac-
to have all Tithes within the Parish, (except Corn, which the
Parson appropriate used to have) viz. of Hay, and also of Hops,
from the Time that they came into England, scilicet, in the Time of
H. 8. and of Woods, (which is a Spring Plant) and now Rape-
seed is sown within the Parish, there never having been any such Seed
sown there before, nor in England till of late Time, yet the Vicar
shall have Tithes of this Rape seed, and not the Parson appropriate,
because this is within the Prescription, tho' it be a New Thing, for
which he cannot prescribe singly, inasmuch as the Parson is excluded
of all, except Corn, and this is within the general Prescription to have
all Tithes, except Corn. 12. 7 Car. V. R. between

† Vicar is he
who hath
that Spirit-
ual Living
called a Vi-
carage, be-
ing no other
than a cer-
tain Part or
Portion of a
Parsonage,
allowed to
the Minister
for his Main-
tenance, in-
troduced at
that Time
when Im-

Resolved per Curiam, upon Evidence at Bar in a Case
which concerns the Parson and Vicar of the Parish of
in Kent, and that there was not any Difference as to this, between
such Endowment, which was † granted of the other Part, and such
Prescription; for the Prescription presumes an Endowment pre-
cedent.

† Fol. 335.

proprations
first began,

both which Livings, as they are commonly called the Church, so both such as serve in them are called
the Patron's Clerks. The Vicar is usually appointed and allowed to serve the Cure, by * him who hath
the Impropriation of the Parochial Tithes; for at the Original of such Impropriations a certain Por-
tion of the Parsonage was allotted and set apart from the rest, to maintain the Vicar who was to serve
the Cure; so that now the Priest of a Parochial Church, where the Predial Tithes are impropriated,
is called the Vicar, h. e. Vice Rectoris. And it seems anciently they did sometimes stile themselves
Perpetual Vicars, because every Vicarage, Corporation-like, hath a constant Succession. Godolph. Rep.
196. cap 18. S. 1 — * S. P. Per Davenport Arg Palm 112. Mich. 18 Jac. B. R. in Britton and
Ward's Case. cites Com. 497. — Vicar is but *he qui venit vicem Pastoris*, to supply his Place in
his Absence. Per Popham Arg. Le. 182. Trin. 31 Eliz. B. R. in Case of Slug v. The Bishop of
Landaff.

Vicarages were not at Common Law in Churches appropriated, but they commenced in 20 H. 3. by
the Constitution of Pope Othobon, which provided that from thenceforward in Churches appropriate, a
Vicar should be endowed under a Penalty, but at Common Law they were Removeable, and not Per-
petual; and since this Constitution Vicars are Spiritual in their Institution and Endowment, and not of
Temporal Consuance; Per Dampart Arg. 2 Roll Rep. 98. in Case of Britton v Ward. — S. P. Arg 4
Mod. 184 in Case of Wharton v. Lisle.

At the Common Law no Juris Utrum lay for their Possessions, but their Possessions might be
increased and decreased at the Will of the Ordinary. And there was no Endowments of Vicars
till the 11th of King John. And no Quare Imredit lay for the Advowson of a Vicarage till
West. 2. cap 5. Nor any Juris Utrum for the Possessions of a Vicar, till 44 E. 3. cap 17. Arg Palm.
113. Mich. 18 Jac. B. R. in Britton and Ward's Case — But it was said by Noy, Palm 114 that Vi-
carages were long Time before King John, and that in Oxfordshire there are 4 Vicarages, which were
much more ancient than his Time. And that in 4 H. 2. a Vicarage was made by Alexander the 3d. —
But Cro. J. 518. Noy said, that if the Beginning of Vicarages be known, it was 8th H. 3. — But
Moreton J. said that Vicars came in in the 17th Year of King John. Mod. R. 12. in Case of Clerk v.
Heath.

2. If a Vicar be endowed out of a Parsonage of all * White Tithes
growing and renewing within the Parish, upon all the Land of the Pa-
rish, the Vicar shall not thereby have Tithes of the Glebe of the Pa-
rish; for he himself is † excepted.

* Minutis
Decimis.
Cro. El. 5-8.
— † Orig is
(Exceptant)

3. If a Vicarage was endowed before Time of Memory out of a
Parsonage of all the White Tithes growing and renewing within the
Parish, upon all the Land of the said Parish; the Vicar shall not
now have Tithes of the Land which at the Time of the Endowment
was Parcel of the Glebe, but now sever'd from the Glebe, inasmuch
as at the Time of the Endowment this Land was exempted out of
the Endowment. Trin. 38 El. B. R. between Blenco and Murlon.
Resolved, and Prohibition granted accordingly; and there by Cook
it

— Upon En-
dowment of
the Vicar,
it was op-
posed that
he should
have the
small Tithes
of all Lands
in the Parish.

yet he shall not have Tithes of the Glebe of the Parson, because Ecclesia Ecclesiarum Decimas solvere non debet. Mo. 910. pl. 1281. Trin. 38 Eliz. Blinco v. Marston Vicar. — But if the Parson leases the Glebe, the Vicar shall have Minutas Decimas of the Lessee, and Lessor shall have the great Tithes; but if the Endowment has special Words, that the Vicar shall have Minutas Decimas of the Glebe, then he shall have them; but then it ought to be Ancient Glebe at the Time of the Endowment. Mo. 910. S. C. — Cro. Eliz. 479 pl. 12. Trin. 38 Eliz. S. C. by Name of Blinco v. Marston. — Cro. E. 578. Mich. 39 & 40 Eliz. B. R. S. C. Blinco v. Barkisdale. — 4 Mo. 910. Cites it as the Case of Young and the Parson of Foxley in Wiltshire — Cro. E. 479. cites S. C.

4. If a Composition be between Parson and Vicar, that the Parson shall have all Tithes Corn and Hay, and the Vicar all other Tithes, and after the Parson's sale of certain arable Land with Saffron or &c. the Parson shall not have the Tithes of the Saffron, but the Vicar. Trin. 7 Ja. 6. Per Coke said to be adjudged.

Cro. E. 467. (bis.) S. C. — Mo. 909 pl. 1277. S. C. — Goldsb. 149. pl. 5. S. C. — S. C. Cited B. R. between Bedingfield and Freake. Hutt 78. as

adjudged Pasch. 2 Jac. in B. R. and says that the Field, planted with Saffron, contained 40 Acres. And in the principal Case there, which was *Uvedall v. Tindall Hill*. 1 Car. It was said that all these New Things, as Saffron, Hops, Wood &c. if it does not appear by material Circumstances to the contrary, shall be taken as Minutæ Decimæ; and accordingly Judgment in that Case was given for the Defendant. — Cro. C. 28. S. C. and there cites the principal Case of Bedingfield and Freake, by Name of *The Dean and Chapter of Norwich's Case* Pasch. 43 Eliz. adjudged.

6. If a Vicar be endowed of a third Part of all the Tithes growing and coming within the Manor of D. he shall have the Tithes of the Franktenants, as well as of the Coppyholders; for all make the Manor. D. 38 El. B. R. between Higham and Best adjudged.

A Vicar was endowed by these Words, (viz. *Habebit tertiam partem Decimarum Fladrum &c. Feni. quemodocunque pervenientem de Maneriis de B. &c.*) The Question was, If by this Indowment the Vicar should have the third Part of the Tithes growing upon the Land of the Freeholders within the Manor. The Court said that a Manor cannot consist without Freeholders, and since they are to be charg'd with the Payment of Tithes, one and the other together shall be said to be the Tithes of the Manor: And so it was adjudged that the Vicar should have Tithes of the third Part of the Land. Ow. 58. 59. Trin. 36 Eliz. Higham v. Best. — Ow. 74. S. C. by Name of Higham v. Best; and Tanfield said, That the Word Manor extends to the Precincts of the Manor, and not to the Demesnes and Services only — S. C. Cro. E. 462. (bis.) Pasch. 38 Eliz. B. R. Higham v. Best. Adjudged by Popham and Fenner, the other Justices not being in Court, That the Vicar should have all the Tithes, as well of the Freeholders as of the Demesnes; for this does not create a New Charge, but is disposing of the Ancient, which was due by the Tenants, and runs thro' the Limits of the Manor; but if this had been made before the Council of Lateran, it would not have charg'd the Freeholders but the Demesnes only; and adjudged accordingly for the Vicar.

Cro. E. 633. S. C. — Tho' Vi Termini Take Hay is not included in the Words Decimis Garbarum at this Day, yet for the continual Use it shall be taken that then they used this Word to such Intent. Palm. 115. —

7. If a Vicar was endowed in Time of H. 3. by the Parson appropriate, among other Things De Decimis Garbarum, growing within a Hamlet within the Parish, and always after this Endowment, the Vicar had used to have the Tithes as well of Hay as of Corn, tho' now at this Day Garba signifies a Sheaf of Corn, and as the Civilians say Garba signifies such Thing as is bound together by a Bond, and in their Books is used for Corn and not for Hay, yet because it is an ancient Endowment, and the Usage always after has been such as is aforelaid; the Vicar shall have Tithes of Hay; for it shall be presumed that in the Time of H. 3. Hay might be compris'd within the Word Garba, and that at this Time the use was to bind Hay in Bundles; for such ancient Grants are not to be expounded according to the Law used at this Day, but as may be intended that it was usual at the Time of the Grant. Mich. 40. 41 El. B. R. Barkisdale v. Smith and Blinco adjudged.

S. C. cited by Noy in Case of Britton v. Ward. 2 Roll. R. 161 cites Barldale v. Smith. — Litt. R. 263. Anon.

8. If a Vicar be endowed De Minutis Decimis, and he has used by Force of this Endowment by a long Time to have Tithes of Wood, which is but of the annual Value of 6 s. 8 d. By Reason of the small Value of the Wood and the Usage, the Wood shall pass by Words of Minutis Decimis. Mich. 10 Jac. B. R. between Reynolds and Green Per Curiam. Adjudged upon Evidence at the Bar, tho' Wood in its Nature be great Tithes.

2 Bullt. 27. S. C. The Judges all agreed in this, That by the Words Alteragia & Minute Decimæ, by

Usage, Tithe Wood may well pass; and so hath the Opinion of all the Civilians been. But per Williams J. by the Word Alteragia, without Usage, it shall not; but if the Vicar Time out of Mind has used to have the same, then it is good, and shall pass by the Words of Minute Decime. And per Fleming Ch. J. accordingly, the Tithe Wood being of small Value; and that by those Words Tithe Wood may pass, tho' the Law be against it. — S. P. Het. 135. Wood v. Green. — Litt. R. 245. S. C.

9. Tho' the Tithes of a Field have been paid to a Parson, yet it being converted to another Use, whereof no Great Tithes do come, the Vicar shall have the Tithes. And so if arable Land be converted into an Orchard, the Vicar shall have the Tithes of the Apples; and so if the Orchard be changed into Arable, the Parson shall have Tithes. Per Popham, quod Fenner concessit. Owen 74. Pasch. 38 Eliz. B. R. Dean and Chapter of Norwich's Case.

10. A Vicar libell'd against the Parson for Tithes of the Glebe. The Parson brought Prohibition, and adjudged Maintainable. And if special Custom be after the Endowment of the Vicarage, this is issuable. Mo. 457. pl. 627. Trin. 38 Eliz. Blenco v. Marson.

11. The Parson cannot prescribe against the first Endowment. Noy 3 Trin. 2 Jac. B. R. Pringe v. Child.

Mo. 82. Pasch. 4 Jac. S. C. A 11

says an Injunction was granted the Vicar, to stay the Suit of the Parson for the Tithes limited to the Vicar on the Composition. — Mo. 191. S. C. by Name of Spring's Case.

12. A Modus between the Parson and a Parishioner, will not discharge the Payment of Tithes as to the Vicar. 3 Bullt. 221. Mich. 14 Jac. Wintel v. Child.

13. As long as the Vicar occupies his Glebe Land in his own Hands, he shall pay no Tithes, but if he demure it, the Lessee shall pay Tithes to the Parson that is impropriate. Brownl. 69. Harris v. Cotton.

If a Vicar be endowed with certain Glebe out of the Parson-

age, the same Glebe so assign'd shall be discharged of Tithes of Corn, in Consideration that the Vicar is bound to serve the Cure; but if a Parson leases Parcel of his Glebe to another for Years, Life, or makes Feodment in Fee, the Lessee or Feoffees shall pay the Tithes, unless some Consideration be charged them of Tithes. Per Manwood Ch. B. Shute Baron, and Gerrard Attorney-General. Str. 3 pl. 8. Mich. 22 & 23 Eliz. in the Exchequer Chamber. Vicar of Sturton v. Griefley.

14. Vicar has the Land and dies; his Executor takes away the Corn, and lets not forth the Tithe; the Parson brought Debt on the 2d Ed. 6. and the Court seem'd to incline it would lie. Brownl. 69. Harris v. Cotton.

15. On a Question about a Piece of Land, parcel of the Glebe, it was offered in Evidence that Indowment was of this Church in H. the III's Time, and in that No Land was mentioned, but it was answered that always in those Endowments Liberty was reserved to increase the Maintenance of the Church; And it was urged farther, That No Land was in the Valuation of this Church in Time of H. 8. when the Churches were valued, but it was answered that Lands were not in those Valuations, and Omissions also of many Particulars were, and the Vicarage House in this Case was omitted, and yet never questioned but it did belong to the Vicarage. Clayt. 9. 8 Car. Coyne's Case.

16. The King cannot make a Licence of Appropriation without a Matter of Record, and it ought to be with a Condition to endow a Vicar, and the Endowment may be by a distinct Instrument from the Appropriation, so

that it be made at the same Time that the Appropriation was. Sty. 156. Mich. 1649. Per Cur. in a Trial on the Case of Cave v. Orby.

17. Bill for Vicarage Tithes in some Towns in Kent, and the Plaintiff did not set forth how they became due to him, whether by Prescription or Endowment; And after an Answer, and Depositions taken, this was objected, at the Hearing the Cause; But the Exception was over-ruled, because the Defendant, by his Answer, admits him to be Vicar, and that the Tithes in question are his Due, but insists only upon Payment and Satisfaction; Quod nota; For it has been often ruled contrary, it being the Ground and Foundation of the Plaintiff's Title; But the Bill was afterwards dismissed upon the Merits with 40 s. Costs. Hard. 130. Mich. 1658. in the Exchequer. Button v. Honey.

18. The Vicar of G. brought Bill for Tithes of the Manor of Uxbury and other Lands belonging to the impropriate Rectory of G.—C. demanded them for 8 Years last past, and ending in 1661. It appeared upon the Hearing, that several Vicars of G. his Predecessors had enjoy'd these Tithes; But an Endowment was now produced, dated 7 March 1362, made by Archbishop Islip, and preserved in his Register, by which it did not appear that the Vicar was endowed with any Tithes of Corn or Grain, neither was there any Liberty therein reserved (as usual) to augment or diminish; Whereupon it was insisted that the Vicar ought not to have these Tithes; But the Court held, That where the Vicars had took Tithes for a long Time he shall not be concluded by their not being expressed in the Endowment, and that it had been often so held and ruled; And that by such long Possession it shall be presumed, that the Vicarage hath at some Time or other been augmented therewith; And the not reserving such Power is not material; For an Augmentation may have been notwithstanding, with Assent of, or citing all Parties, but not without Notice or Citation. Hardr. 328. Trin. 15. Car. 2. in the Exchequer. Twissle v. Brazen-nose College & al.

19. A Vicar may pay Tithes; As where an Abbot or other had a Portion of Tithes out of a Vicarage, which is now come to the Plaintiff. Lev. 141. Mich. 16 Car. 2 B. R. Wright v. Beal.

Sid. 443.
S. C. accordingly; and that Hops were but of late Time, notwithstanding the Records cited by Lord Coke to the contrary. But it was said, That if the

20. Vicar libell'd in the Spiritual Court for Tithe Hops. It was suggested for a Prohibition, that they had paid Time out of Mind to the Parson so much an Acre for all Tithe Hops; But the Prohibition was denied; For no such Composition could be Time out of Mind, Hops not being known in England till Q. Elizabeth's Time, when they were first brought out of Holland; But the Court said, that perhaps the Vicarage was endowed Time out of Mind of the small Tithes, of which Nature Hops were; and then the Prescription of paying a Modus to the Parson shall not take them from him; For it shall be taken to have commenced since the Endowment. Vent. 61. Hill. 21. & 22. Car. 2. B. R. Crouch v. Ridsen.

Suggestion for the Prohibition had been to pay so much in Lieu of all small Tithes Prohibition should go; Because Hops, Oade, and such small Things of new Invention are Minutæ Decimæ, but the Suggestion being not so, the Prohibition was denied.—— 2 Keb. 612. S. C.

21. The Tithe of Clover Grasse belongs to the Vicar who has the Tithe Hay, except only such Clover as was necessarily cut amongst the Corn where it did grow. Cited by Gregory J. as adjudged in the Exchequer when he was Baron. Carth. 264. Hill. 4 W. & M. B. R. in the Case of Wharton v. Lisle.

22. If the Endowment of the Vicarage be lost, the Tithes must be paid according to Custom. Per Cur. 3 Salk. 379. Anon.

(D) Vicarage. Patron. *Who shall be Patron of Common Right.*

1. **T**HE Parson, and not the Patron of the Parsonage of Common Right is Patron of the Vicarage; Because it is derived out of the Parsonage. *Dubitatur.* 17 E. 3. 51. b. *Contra* 5. E. 2. *Quare Impedit.* 165. per *Past.*

And it is upon this Account, That if a Parson be Patron of a Vicarage,

and leases the Parsonage to another, the Patronage of the Vicarage shall pass as Incident thereto. *Watf. Comp. Inc. Svo. 107. cap. 7. cites 2 Roll Abr. 59.* And says, That upon the same Account the Rector of Common Right is ever Patron of the Vicarage, tho' by some Ordinance or Composition it may be appointed and settled otherwise. — *Wats. Comp. Inc. Svo. 345. cites S. C.* But says *Quare*, How one Person can be Parson, viz. Appropriate, and another said to be Patron of the Parsonage Appropriated, seeing, as is shewed, the Inheritance of the Advowson of a Church appropriated must be in the spiritual Corporation, to whom the Appropriation is made; In which case it is clear, that the Parson Appropriate, creating a Vicarage, is Patron thereof, and cites 17 E. 3. 51. and it is said that a Parson Appropriate is Patron of the Vicarage and cites 17 E. 3. 51. b. 11 H. 6. 18. b. As where an Abbot or Prior is Parson Appropriate, cites 19 E. 2. *Quare impedit.* 178.

2. If a Parson Appropriate creates a Vicarage, he shall be Patron of it. 17 E. 3. 51. (He is Patron and Parson)

Where Appropriation of a Benefice is

made, and Vicar endowed, the first Patron shall be Patron of it, and not the Ordinary. *Quod nota.* Br. *Presentation*, pl. 10. cites 50. E. 3. 25,

3. The Chusing of a Vicar belongs de Jure to the Priest, viz. to the Parson; But if the *Parishioners* can prescribe to elect him, it then belongs to them. 2 Roll. R. 304. by Name of Code and Hulmed. [But that seems not to be the Name of the Case. It was in a Prohibition.]

3. It was denied by the Lord Chancellor, that the Parson De Jure has the Nomination of the Curate, and more especially where the Parson is of a Lay Fee. *Vern. 42. pl. 42. Pasch. 1682. Mallet v. Trigg.*

The Case was, A Prebendary had damped for 3 Lives the

Corps of his Prebend, which consisted of two Impropriations, and so now by the Statute were become Lay-Fee; In the Lease were as General Words as was possible, and particularly that the said Lessee should find two Vicars for the aforesaid Impropriations, and pay to one so much, and to another so much; But the Lord Chancellor said, That by finding, was meant maintaining only, and not electing or chusing; and he said there was a great Difference as to the Parson's Right of naming or chusing his Vicar, where the Parson was of Lay Fee, and where he had a Cure of Souls; For in the later Case there was Reason he should approve of the Man who was to act under him in so high a Trust. And the Curate, that came in by Opposition to the Lessee, was established by the Lord Chancellor, and the Charity decreed to him 1 Vern. 42. Pasch. 1682. Mallet v. Trigg. — This Case came before the Chancellor, upon Exceptions to a Decree of the Commissioners of Charitable Uses. One Exception was, That by the Statute of the 29th of this King, none but Ecclesiastical Persons could augment poor Vicarages, so as to be established as a Charitable Use within that statute, And that the Lessor, in this Case, who was only a Prebendary, was not within that Statute. Sed non allocatur. Ibid.

(E) Parson. Vicar. Who may be Patron. [And of their being Appendant. pl. 5.]

1. A Layman may be Patron of a Vicarage. 11 H. 6. 19. *Contra* 39. E. 3. 33.

Watf. Comp. Inc. Svo 345, 346. cites S. C.

2. A Layman may be Patron of the Parsonage, and also of the Vicarage. 11 H. 6. 19.

Watf. Comp. Inc. Svo 345, 346. cites S. C.

3. A Parson appropriate may be Patron of the Vicarage. 11 H. 6. 18. b. 17 E. 3. 51. b. 39 E. 3. 33. where Abbot or Prior is Parson. 19 E. 2. *Quare Impedit* 178.

See (D) pl. 1.

4. The King may be Patron of a Vicarage. 11 H. 6. 18. b.

Watf. Comp. Inc. Svo 345. cites S. C. 5. E. 6

2 Full. 88.
S. C. —
Vicariage
may be ap-
pendant to a
Manor, and
I have seen
one so; But

5 The Vicariage may be appendant to a Manor by Prescription, though of Common Right it appertains to the Parsonage; For it might be granted over by the Parson before Time of Memory, or by Composition. My Reports 13 Ja. between the King and Sacker. Adjudged. Mich. 14 Ja. B. between the Dean and Chapter of Exeter and Cornwall. Adjudged.

5 R. 2. Quare Imredit is adjudged contra; per Coke. Roll R. 237. Mich. 13 Jac. S. C. — Though the *Adversion* of the Vicariage usually appertains to the Parsonage, yet it is not of Necessity, and it may be appertaining to a Manor. Cro J. 386 the King v. Bishop Norwich, Cole, and Saker. — Wat. Comp. Inc. 8vo. 167, 168 cap. 7. S. P. and cites same Cases, and Mo. 894. [pl. 1258] Mich. 16 Jac. that in this Case, though the Right of Appropriation be not extant, yet the Use of Presenting Time out of Mind is a sufficient Evidence of the Appendancy to the Manor &c. contrary to Common Right. Sir Geo. Shirley v. Underhill and Burley.

See (T) (E. 2) Patron. *Who shall be said to be a Patron.*

For this is a 1. **I**N Qua. Imp. if a Man grants to me that I shall have the Nomination of a Clerk, and he will present him to the Ordinary, there I am Patron; e contra where he grants to me that I shall name two and he shall present one of them, there he is Patron; for he has Election; Per the Justices; and a Grant of the Nomination, or of the Presentation is all one; and per Littleton, a Grant of the free Disposition of the Church of E. is a good Grant of the Presentation. Br. Grants, pl. 101. cites 14 E. 4. 2.

— He that names the Clerk is Patron, and not he who is to present him. Br Quare Impedit, pl. 56. cites 4 H. 4. 10. 11. [but it is misprinted, and should be as in the other Editions, 14. H. 4.]

2. Grantee of the next Presentation is Patron, Pro illa Vice. Br. Grants, pl. 112. cites 7 H. 4. 2.

(F) Vicar. Endowment. *The Interest of the Vicar in the Things whereof he is Endowed.*

In Restal
this is 14 E.
3. Stat. 1.
cap. 17.
which en-
acted, That

1. **B**Efore the Statute of 14 E. 3. cap. 16. a Vicar had not any Franktenement in the Glebe of the Vicarage.

2. For he could not have a Juris Utrum for the Glebe of his Vicarage. 9 E. 3. 50.

Parsons, Vicars, Wardens of Chapels, and Provost Wardens, and Priests of perpetual Chantries shall have their Writs of Juris Utrum of Lands and Tenements, Rents and Possessions, annexed and given perpetually in Aims to Vicarages, Chapels, or Chantries, and recover by other Writs in their Case, as far forth as Parsons of Churches and Prebends.

In Juris Utrum it was agreed, that for Land between Parson and Vicar, of which the Vicar is endowed by the Ordinary, Action did not lie at Common Law between them, but the Defendant might plead to the Jurisdiction in an Action brought against him by the Vicar, but of all other Lands the Vicar might implead the Parson at Common Law, but not of the Endowment; for of that the Franktenement remained in the Parson; for it is done only by the Ordinary by Assent of the Parson, and therefore no Franktenement passed as it is said there; and yet by Endowment of a Feme Ex assensu Patris Franktenement passes, and some said there, that a Vicar of his Ancient Endowment may have * Action at Common Law against the Parson; quære; for Fynche said, That in ancient Time it was the Opinion, that as Vicar should not have Action against the Parson at Common Law, But contra by him at this Day, which is the best Order as he said. Quære. Br. Jurisdiction, pl. 5. cites 40 E. 3. 28. — Br. Dean and Chapter, pl. 2 cites 40 E. 3. 27. — Br. Juris Utrum, pl. 2. cites S. C. — Br. Precipe, pl. 20 cites S. C. — * S. P. Br Precipe, pl. 28. cites 12 Aff. 4. 14. But Brooke says, see now the Statute 14 E. 3. cap. 17. which gives Action to the Vicar — Godolph. Rep. 197 cap. 18 S. 2. says, That now it seems the Freehold of the Glebe of the Vicarage is in the Vicar himself, and not in the Parson, For that the Possessions of the Vicar and Parson are severed, and each of them shall have several Writs

Writs concerning their respective Rights, and shall not join in one Writ; And the Vicar shall have and maintain Juris Utrum against the Parson, who is the Patron of the Glebe of the Vicarage for the same Glebe.

3. A Præcipe could not be brought for the Glebe of the Vicarage against the Vicar without Naming of the Parson. 3 E. 3. 17. 6 E. 3. 50. He was not such a Tenant of the Franktenement, against

whom the Land of the Vicarage might be demanded Br. Deane &c. pl. 13. cites 8 Aff. 36. and that it was said 9 Aff. 3. that the Vicar was not Tenant of the Franktenement, and so it seems that the Franktenement thereof was in the Parson. Quod Nota bene.

4. The Vicar shall have Aid of the Parson, Patron, and Ordinary. See (H. 2) pl. 5. 9 E. 3. 8. b.

5. The Plaintiff being inducted to a Parsonage, [Vicarage] the Defendant notwithstanding kept the Possession by Force, whereupon the Plaintiff [the Vicar] was forced to file his Bill in Chancery; but the Defendant demurred, because the Vicarage is his Freehold and Inheritance, and so properly determinable at Law; yet the Demurrer was over-ruled. Toth. 171. cites 5 Jac. Webb v. Smart.

(G) Parson. The * Interest of the Parson in the Church and Church-yard.

Fol. 33.
See (K.) pl. 3.—Church-yard.
* The Parson has a Right to

1. THE Parson may lease the Church and Church-yard by Lease of the Parsonage. 8 H. 6. 9. Admitted.

the Possession of the Church and Glebe, having the Freehold in himself, and may receive the Profits, Tithes, Oblation, Obventions and Offerings to his own Use, without the Patron's or Ordinary's Consent, who, without his Consent and Agreement, can do nothing during his Incumbency to change the Church or his Successors; And not only is the Freehold of the Church in the Parson, but he has also the Right of the Church-yard and Glebe with it, whereof if he be put out of Possession or dispossessed, he may have an Assise, or if he be ejected he may have Trespass, and so may the Vicar have against a Stranger, if he be dispossessed of the Church-yard, but not against the Parson himself. For the Parson shall have an Assise or Action of Trespass of such Things as are annexed to the Church or Glebe, or for cutting down of the Trees, or doing of Trespas in the Church-yard or Glebe, the Right and Interest thereof being in the Parson. But if the Bells in the Steeple, the Ornament of the Church, or the like be taken away, in that Case the Action does not belong to the Parson, but to the Churchwardens. Notwithstanding the Parson's Right and Interest as aforesaid, yet he cannot cut down the Trees growing in the Church-yard of his Parish, save for the Repair of the Church. Or if a mere Stranger cut them down, no Suit can be thereon in the Spiritual Court for Damages; For if Suit be there commenced in the Case for Damages, no Consultation shall be. Nor can the Parson have Actions for Seats in the Church taken away by a Stranger, because they are not fixed to the Freehold; But the Churchwarden may have Action in that Case. Godolph. Rep. 186, 187. cap. 17. S. 3.

2. 8 H. 6. 9. The Lessee at Will of the Parson brought Trespas of his Close and House broke, which was of the Church and Church-yard, and admitted maintainable. (It seems by the Book that it was for coming there not in Time of Service, or such like, but at another Time.) Br. Dean and Chapter, pl. 7. cites S. C. —Br. Trespas, pl. 121. cites S. C.

3. If there be a Parson Appropriate of a Church, and also a Vicar endowed thereof, the Trees in the Church-yard belong to the Vicar, and not to the Parson; For it seems that the Vicar ought to repair the Church, and he who ought to repair the Church shall have the Trees. Dubitatur. Mich. 13 Ja. B. R. Bellamie's Case. Roll. R. 257. S. C. and per Coke and Dodderidge, a Parson of Church cannot cut Trees

growing in the Church-yard, unless to repair the Church. But Coke cited a Statute, and said, that in the End thereof it is said, (after speaking of cutting of Trees growing in the Church-yard for Reparation of the Church) Et si non Præcipimus, tamen Factum non Condemnamus.

4. Where there is a perpetual Vicarage endowed, and the Vicar comes in by Admission, Institution and Induction, performs Divine Service, &c.

the Synecials and Procurations, and repairs the Chancel, it has been adjudged, that such a Vicar shall have the Trees in the Church-yard. Arg. Vent. 15. Patch. 21 Car. 2. B.R. in Case of Heath v. Pinn.

(G. 2) *Actions. What Actions he may have for Trespass &c. done.*

And he may have Assise of his Rectory, Church-yard and Glebe, **1.** *If a Man Ejects a Parson without Colour, he shall have Trespass. Br. Dean and Chapter, pl. 12. cites 28 H. 6. 19. per Markham; Quod all the Justices conceit.*
against a Stranger who has not Colour, or who is a Tort-feisor therein; For it is his Franktenement. Ibid. — And he shall have Trespass of taking his Tithes. Ibid.

2. A Parson may have *Juris utrum* after Recovery by Action tried against his Predecessor; and he may have *Cessavit, Writ of Ejectment, and Quod permittat.* Br. Dean and Chapter, pl. 27. cites F. N. B. tit. *Juris Utrum.*

3. A Parson shall *not* have *Ingressus ad terminum qui preterit*, but *Juris Utrum*; for he has not properly Fee Simple, and this Writ of Entry ought to be brought only by him who has Fee Simple. But Writ of Entry sur Disseisin is otherwise. Br. Dean and Chapter, pl. 28. cites F. N. B. tit. *Ingressus ad terminum.*

See (H 2)

(H) Parson. Vicar. *Re-united. Enlarged.*

Ley. 14 S. **1.** *If there be a Vicar and a Parson appropriate, the Ordinary and the Parson appropriate may, in Time of Vacation of the Vicarage, Re-unite the Vicarage to the Parsonage. M. 7 Ja. B. R. Stafford's Case upon Reference out of the Court of Wards. Admitted by the Justices.*
*to the Rectory or Parsonage out of which it was endow'd, to be holden by the Corporation Spiritual, and his or their Successors, that were Parsons of the appropriated Church, together with that where-with it was endow'd, to his or their proper Use, so that the Appropriator should have and take Care of the Souls which the Vicar had, and the Patron who is the Appropriator doth concur thereto, This is said to be a Dissolution and Restitution of the Vicarage to the Parsonage, and good, and is not such an Appropriation of the Vicarage as is made void by the Statute of 4 H. 4. cap. 12. as was admitted by the Justices upon Reference out of the Court of Wards. Mich. 7 Jac. B. R. Stafford's Case. But then this Restitution must be made upon the Reason, that the Appropriator is become Poor, and doth want such Restitution, 40 E. 3. 28. And such Dissolution and Restitution of the Vicarage may be as well made when such Vicarage is full, if it be said, that it shall be after the *Death of the Incumbent, as when it is void; and such Vicarages as were held from the Time that the Restitution was to take Effect by the respective Appropriators with the Parsonage, as one intire Church without any Vicar, until such Time as they came to the Crown by the Dissolution of the Monasteries, cannot now be presentable, but the King or his Patentees shall enjoy them as free as the Appropriators had or held the same; and although that such like Restitutions or Unions had been any Way defective at the Time of the making the same; yet being good in Reputation, the Statute of Dissolution of Monasteries hath fully settled them in the Crown. Watf. Comp. Inc. 8vo. 349, 350. cap. 17. cites Ley. 14. Mich. 1609. Stafford's Case, and 4 E. 3. 27. and Cro. J. 517. in Britton and Wade's Case, and Cro. E. 873. Hill. 44 Eliz. Robinson v. Bedle, and Palm. 113, 219. Mich. 18 Jac. Britton and Ward's Case. — But there was a Difference taken (by Moubrey) when a Layman gives Land to one that is a Vicar, and when the Vicar is endowed by the Ordinary of the Parson's Land &c. For in the first Case, the Ordinary hath no Power to dissolve the Vicarage as to the Land, tho' he hath in the other. Watf. Comp. Inc. 8vo. 351. cap. 17. cites 4 E. 3. 27. See 20 E. 3. Annuity 32. 16 E. 3. Annuity 24. and 40 E. 3. 28. b. — * S. P. Or after Resignation. Br. Appropriation. pl. 2. cites 50 E. 3. 26. — If Parson and Vicar are in one Church, and the Vicarage void, and A B. presents C. to it as Parson, this makes C. Parson, and Writ lies against him accordingly. Br. Deane &c. pl. 24. cites 11 H. 6. 18.*

2. If there be a Parsonage appropriate in an Ecclesiastical Parson, which never came to the King by the Statute of Monasteries, and a Vicarage endow'd there also, and the Parson makes a Lease of the Parsonage for Lives, according to the Statute of 32 H. 8. the Vicar may well sue in the Ecclesiastical Court against the Parson and his Lessee, who comes in by the Statute, for Addition of Maintenance, and the Ordinary may well compel them to increase his Maintenance; for, upon all Appropriations, such Power to increase the Maintenance of the Vicar was reserved to the Ordinary, and the Lessee comes in subject to this Charge. *Hill. 9 Car. B. R. between Hitchcock Plaintiff, and Thornburrough and Hitchcock Defendants; The Plaintiff being Vicar of the Parish of Dreshut in Comitatu Wilts, and Thornburrough Parson, the Church being appropriated to the Master of the Choristers in the Cathedral Church of Sarum, he being Master, and the other Defendant being his Lessee. And upon such Suit against the Defendants by the Vicar in the Ecclesiastical Court, a Prohibition denied being moved by Master Parson.*

the Impropricator is a *Spiritual Person*; for in the last Case, it is probable he may sue for an Augmentation; and in some Cases where the Improprication is not a Lay Fee, as in the Case of the *Chancellors of Salisbury*, where the Appropriation of a Parsonage was made to them before the Statute, and continues to this; and in such Case, the Bishop may make an Augmentation if that Power is reserv'd; for the Persons are subject to his Command. 3 Salk 3:8. *Lutten v. King.*

3. If an Advowson be appropriated to the Abbot, and A. B. brings Writ of Right of Advowson by elder Title than the Appropriation is, and recovers the Advowson of the Parsonage, where a Vicar is endow'd, there, he shall recover both the Vicarage and the Parsonage. *Br. Judgment. pl. 138. cites 16 E. 3. And Fitzh. Grants 56.*

Vicarage, for the Vicar was made and endow'd when the Appropriation was made; and by Recovery by elder Title than the Appropriation was, it is now made a Parsonage again alone, and the *Vicarage* dissolved by this Judgment. *Br. Judgment. pl. 138.*

4. In Trespass for taking certain Loads of Wood set out for Tithes, the Defendant pleaded Not Guilty. The Plaintiff for Evidence shew'd, that in the Time of King E. 3. the Rectory was impropriated, and the Vicarage then endow'd; and (inter alia) the Tithes of Wood were allotted to the Vicar. The Defendant shews, that for 160 Years last past there had not been any Vicar presented there, until the Plaintiff obtained a Presentation from the Queen by Colour of Lapse; And so pretended, that in regard it had continued so long in this Manner, that it re-united again to the Rectory. But the Court informed the Jury, that altho' a Vicarage is always taken out of the Parsonage, and for the Necessity thereof may be re-united to supply the Parsonage, yet, by Continuance of Time in not presenting a Vicar, which is the Default of the Parson himself, it ought not to be adjudged to be a Discontinuance of the Vicarage, but somewhat ought to be shewn of the re-uniting thereof; Wherefore, by the Court's Direction, the Jury found for the Plaintiff. *Cro. E. 873. Hill. 44 Eliz. C. B. Robinson Vicar of the Church of Kimbolton v. Bedel.*

5. A Parsonage was appropriated to the Deanry of St. A. in 24 H. 8. and a Vicarage endow'd; and afterwards the Bishop, in 24 Eliz. dissolved the Vicarage, and Parry pretending that this Vicarage was not dissolved, but that it was in the King's Hands by Lapse, obtained a Presentation. And 'twas resolved by the Barons of the Exchequer, that after the Statute of 31 H. 8. which made Parsonages Lay-Fees, the Ordinary may not dissolve the Vicarage when the Parsonage is in a Temporal Hand, for that it should be to destroy the Cure. But being in this Case appropriated to the Dean of St. A. it so remaining in his Hands may very well be dissolved. And according thereto was the Opinion of Doderidge

J. Cro.

J. Cro. J. 518. Mich. 16 Jac. B. R. in the Case of Britton v. Wade cites it as the Case of Parry v. Banks.

S. C. 2 Roll
Rep. 127
Mich. 17.
Jac. B. R.
And the
Court de-
clared their
Opinions,
That the
Statutes of
15 R. 2. and
4 H. 4. do
not extend
to Appropri-
ations made
afterwards;
for the
Words of

6. The Prior of D. was *sufsed of the Advowson* of N. appropriated to his Priory, and also of the Vicarage of N. endow'd with the Altarage and small Tithes. The Appropriation and Endowment were both in the Time of King John, and continued 'till the Time of Hen. 6. when the Pope, in regard the Priory was poor, granted by his Bull, that the Prior should appoint one of his Monks to officiate the Cure, who should be removable ad Natum Prioris. The Question was, Whether the Vicarage was dissolv'd? Resolv'd, That a Vicarage perpetual could not be dissolv'd after the Statute of 4 H. 4. and that the Pope could not make any Ordinance against that Statute which was in the Affirmative, and cited 11 H. 4. that the Pope cannot dispense by his Bulls with the Temporal Law, tho' they tend In Ordine ad Spiritualia; and there were no Words that amount to a Dissolution, but the Words only are, that the Vicar should be Ad Natum Prioris. Cro. J. 515. Mich. 16 Jac. B. R. Britton v. Wade.

the Statute are in the future Tense (That from henceforth &c.) and further they held, that the Instrument of the Pope had dissolved the Vicarage; for the constant Usage and Reputation subsequent (which are the best Expositors of the Act) declare the Validity, Intention and Force of the Instrument made by the Pope, viz. That it amounts to a Dissolution; And Mountague Ch. J. founded a 2d Reason thereupon, For inasmuch as always after 29 H. 6. 'till 31 H. 8. it remained in Reputation to be an Impropriation without Vicarage, because the Statute of 31 H. 8. gave it to the King in the same Manner as then it was; And all the Justices said, that great Inconveniencies would follow, if such sleeping Vicarages should revive after so long a Time; for there are several Impropriations in England, for which Men have given valuable Considerations to the King, discharged of Vicarages. But Doderidge and Haughton 1. held, that admitting the Impropriation had been within the Statute of 15 R. 2. and 4 H. 4. then the Bishop is restrain'd and the Pope also from dissolving the Vicarage, for otherwise the said Statutes might be easily eluded; for when the Impropriations are made, and the Vicarage endow'd, according to the Words of the Statute, the Bishop will immediately dissolve it, which would be contrary to the Intent of the Statute. — Godolph. Rep. 202. cap. 18. S. 17. cites S. C. that the Vicarage was not dissolv'd — S. C. cited Watf. Comp. Inc. 8vo. 350. cap. 17. And says, that the Words are not sufficient to make a Dissolution, nor do amount to such; nor do they so much as give the Prior Power to take the Profits.

See (H.)

* There is
no Letter to
this in Roll.

* (H. 2) Parson. Vicar.

Br. Dean
Sec. pl. 25
cites S. C.

By Houghton
and Yelverton. — Go-
dolph Rep.
197. cap. 18.

S. 11. cites S. C. — Watf. Comp. Inc. 8vo 357. cap. 17. cites S. C. and 40 E. 3. 28. [Infra pl. 7, S.] But this now to be understood of a Parsonage in an Ecclesiastical Person, which never came to the King by the Statute of Monasteries; and if the Parson hath made a Lease for Lives, according to the Statute 32 H. 8. the Vicar may well sue in the Ecclesiastical Court against the Person and his Lessee that comes in by the Statute for Addition of Maintenance; and the Ordinary may compel them to increase his Maintenance; for upon all Appropriations such Power of increasing the Maintenance of the Vicar was reserved to the Ordinary by the Common Law. March. 8. 3 E. 2. 74. — Mar. 8. pl. 142. says, That this Power Augendi vel Minuendi was for the general Cure of Souls.

For. 228

For being

originally endowed out of the Parsonage, the Vicar was to have Aid of the Parson if he were impleaded for any Thing touching the Vicarage, and the Parson was subject to every Charge of the Vicarage. Godolph. Rep. 197. cap. 18. S. 2. cites 31 H. 6. 13. by Yelverton.

See pl. 10.
in the
Notes.

4. If a Parson appropriate, who is Patron of the Vicarage of the same Church, by Agreement between him and the Ordinary, pretends

the

the Vicar to the Parsonage, this unites the Parsonage and Vicarage together. 44 E. 3. 33. b. Admitted 44 Aff. 37.
Godolph. Rep. 199 cap. 18. S. 11
 cites S. C.—Watf. Comp. Inc. 351. 8vo. cap. 17. cites S. C. And says, So that the Presentee shall have all the Tithes and Profits of the Church.

5. But if the Lessee of the Parsonage presents the Vicar to the Parsonage, this union shall not bind the Lessor. 44 E. 3. 33. b. 44 Aff. 37.

6. And if they are united the Endowment is come to the Parson again. 20 E. 4. 6. b.

7. If the Parsonage become much impoverished, the Ordinary may ordain, that the Parson shall be restored to that whereof he endow'd the Vicar. 40 E. 3. 28. b.

8. But he cannot do this, unless for the Poverty of the Parsonage. 40 E. 3. 28.
But it was said by Compton

Doctor of the Civil Law, That Union made upon a supposed and pretended Poverty, which appears to be false, is void. Cro E. 501. Mich. 38 & 39 Eliz. B. R. in Case of Austin v Twine.

9. But if Stranger gives Land to the Vicar and his Successors, the Ordinary cannot meddle therewith. 40 E. 3. 28. b.

Br. Juris Utrum, pl. 2. cites S. C. Per Mombray.

10. If an Abbot, being a Parson appropriate, be Patron of the Vicarage, and presents to the Vicarage by Name of a Parsonage, this disappropriates the Parsonage, and makes it and the Vicarage but one Parsonage, and reunites them. 11 H. 6. 18. b. 3.

Godolph. Rep. 199. cap. 18. S. 11. cites S. C.—Br Annuity, pl. 44. cites S. C.—Watf. Comp. Inc. 351. cap. 17. says this is a Disappropriation of the Church, tho' there be no precedent Agreement between the Parson and the Ordinary to that Purpose, and it shall be presentable after. Cites 44 E. 3. 33. b.

11. If a Patron of a Vicarage, another being Patron of the Parsonage, presents thereto by Name of a Parsonage, and his Clerk inducted, yet it continues a Vicarage. Dubitatur. 11 H. 6. 19. 32. b.

12. The same Law, if the King presents by such Name to such Vicarage. Dubitatur. 11 H. 6. 18. b.

Br Annuity, pl. 44. cites S. C.

13. If there be a Vicarage and Parsonage (and both are void) and one presents his Clerk as Parson, and he is so inducted, this shall unite the Parsonage and Vicarage again. 11 H. 6. 33.

All Appropriations are Preternatural, and the Church during

ring such Time is in Bondage; and therefore by Presentation is made Presentative. Per Windham J. Keb. 9. 6. pl. 8. Trin. 17. Car. 2. B. R. in Case of Wilkinson v. Richardson.—Watf. Comp. Inc. 8vo 352. cites S. C. and says, It appears by this, that a Layman having an Appropriation, may disappropriate it by Presentation, if he be Patron of the Vicarage of the same Church, as well as an Ecclesiastical Person may, if Institution and Induction be had upon it; and it is even said, that such Patron by his Act of Presenting only to the Vicarage by the Name of a Parsonage, does disappropriate the Church, and unite the Parsonage and Vicarage into one; and cites 11 H. 6. 18. b. 3. 38 H. 6. 20. F. N. B. 35.—And therefore Hobart says he is of Opinion, that if Parson appropriate presents, and his Clerk is refused for just Cause, and Notice given, Lapse shall incur; for the Appropriation gives him a Choice [The Word in Hob. is (Charge)] to hold or not, as appears by the Form of an Appropriation in Grendon's Case, which by his Presentment he has renounc'd. Hob. 152. in Case of Colt and Glover v. Bishop of Coventry &c. But Watson makes a Quare whether a Disappropriation be perfected by Presentment, before Institution and Induction had thereupon?

14. If a Parson appropriate creates a Vicarage, and after the Advowson of the Church is recovered by Writ of Right; the Vicarage is defeated thereby, because the Plaintiff recovers of a higher Right than the making of the Vicarage. 17 E. 3. 51. b. 76.

15. But otherwise it is, if he recovers of a later Right than the Creation of the Vicarage. 17 E. 3.

16. If Vicar be of the Dowment of the Ordinary and Patron, all the Franktenement is in the Parson; and otherwise in the Vicar, if it be by other Title. Br. Dean and Chapter, pl 34 cites 40 E. 3. 27.

See (H.) pl. 6 — Tho' the Statutes 15 R. 2. and 4 H. 4. say that there must be a Vicarage endowed upon every Appropriation, yet they do not extend to Appropriations Prior to the making the said Acts. Arg. Gibb. 251. Pasch. 4 Geo. 2. in Case of the Bishop of London and Lewen v. the Mercers Company.

17. 15 R. 2. cap. 6. Enacts that in every Licence made in Chancery of the Appropriation of any Church, this shall be contained (viz. That the Diocesan shall ordain (according to the Value of such Churches) a convenient Sum to be yearly distributed out of the Profits thereof, to the Poor of the Parish, by the Appropriators and their Successors for ever; and also that the Vicar shall be sufficiently endowed.

18. 4 H. 4. cap. 12. Enacts that the Statute of 15 R. 2. 6. shall be duly executed, and Appropriations made since that Statute contrary thereto, shall be reformed before Easter, or else to be void, except Haddenham in the Isle of Ely.

All Vicarages annexed or appropriated since 1 R. 2. shall be void.

In every Church so appropriate, a Secular Person shall be ordained Vicar, Canonically instituted and inducted in the same, and conveniently endowed (by the Discretion of the Ordinary) to do Divine Service, inform the People, and keep Hospitality there, (except Haddenham aforesaid) and no Religions shall be hereafter made Vicar in any Church so appropriate.

19. If Vicarage be Erected and Establish'd, if No Endowment be De Facto of the Vicarage, the Vicar can't claim any Thing. Per tot. Cur. Palm. 426. Pasch. 2 Car. B. R. Cope v. Bedford.

20. A Vicar cannot have Tithes but by Gift, Composition or Prescription; for all Tithes De Jure do appertain to the Parson. Mar. 11. pl. 29. Pasch. 15 Car. Anon.

8 C. Sid 447. but there it is said to be for Tithe Wood and Tithe Woad or Woad

21. A Vicar libell'd for Tithe of Woad; the Defendant suggested for a Prohibition, that Time out of Mind they had paid no small Tithes to the Vicar, but that by the Custom of the Parish they were paid to the Parson. Per Twisden, If the Endowment of the Vicarage is lost, small Tithes must be paid according to Prescription. Mod. 50. Hill. 21 & 22 Car. 2. B. R. Tildale v. Walter.

(which is a Dye-Stuff) and that as to the Woad it was suggested that the Tithe thereof belonged to the Parson and not to the Vicar; but this was doubted of, because it is reckon'd among small Tithes, like Hops &c.

22. Libel for Tithes by a Parson, the Defendant suggested for a Prohibition a Modus to the Vicar, and that the Vicarage had been endowed Time out of Mind; and it was granted. Vent. 107. Hill. 22 & 23 Car. 2. B. R. Robson's Case.

23. 29 Car. 2. cap. 8. Sect. 2. Enacts, That Every Augmentation, reserved, or agreed to be made payable since the first of June, in the 12th Year of his Majesty's Reign, or which shall be made payable to any Vicar or Curate, or reserv'd by way of Increase of Rent to the Lessors, but intended for the Benefit of any Vicar or Curate, by any Archbishop, Bishop, or any other Ecclesiastical Persons out of any Rectory impropriate, or Portion of Tithes, shall continue for ever, as well during the Continuance of the Estate, upon which the Augmentations were reserved, as afterwards; and the said Rectories, or Portion of Tithes, shall be chargeable therewith, whether the same be reserved again or not, and the said Vicars and Curates are hereby adjudged to be in the actual Possession thereof for the Use of themselves and their Successors; And shall have Remedy for the same either by Distress upon the Rectories impropriate, or Portions of Tithes, or by Action of Debt against that Person who ought to have paid the same.

Provided that no future Augmentation be confirmed by this Act, which shall exceed one Moiety of the yearly Value of the Rectory Impropriate.

Every

Every Archbishop, Bishop, Dean and Chapter, shall cause every Lease or Grant, whereon any such Augmentation is made, to be entered in a Book of Parchment, to be kept by their Registers; And every Dean, or other Ecclesiastical Person, shall cause every Lease or Grant, whereon any such Augmentation had been made by himself or his Predecessors, to be entered in the said Book, which Entry being examined by the Archbishop, Bishop, or Dean, and attested in the Book to be a True Copy of the Original Lease or Grant, and that the Augmentation in the same was intended for such Use, shall be as a Record, a Copy whereof proved by Witnesses shall be Evidence in Law, whereupon the Vicars and Curates may recover the Benefit of such Augmentation.

Where any Archbishop, Bishop, or other Ecclesiastical Person, upon the renewing or granting any Lease, have made any Agreement for an Augmentation for the Vicar or Curate, and such Augmentation hath for any Time been paid, altho' the Agreement is not mentioned in the Lease, such Ecclesiastical Person shall cause the Substance of such Agreement to be entered in the Book.

Such Augmentation so entered shall likewise continue for ever in the same Manner, as if the same had been reserved by the Lease.

If any Question arise concerning any thing in this Act, such favourable Constructions, and such farther Remedy, shall be had for the Benefit of the Vicars and Curates, as may be had upon the Statutes for Charitable Uses.

If upon the Surrender or Determination of any Lease, wherein any such Augmentation hath been granted, any new Lease of the Premises shall be made without express Continuance of the Augmentation, such new Lease shall be void.

24. Where the Vicar is endowed, and comes in by Institution and Induction, he hath Curam Animarum Actualiter, and is not to be removed at the Pleasure of the Rector, who in this Case hath only Curam Animarum Habitualiter; but vice versa, the Rector has Curam Animarum Actualiter, and may remove the Vicar at Pleasure. 3 Salk. 378. Smith v. Waller.

(I) Parson, Patron, and Ordinary. Their Power jointly in the Time of the Parson.

1. **P**arson Patron and Ordinary may create a Vicarage 8 R. 2. Annuity. 53.

2. The Patron and Ordinary may charge the Church, in Time of Vacation for ever with an Annuity, or such like. Br. Charge. pl. 38. cites 8 E. 3. 26. & Fitz. Release 57.

And the Parson may charge with Assent of the Patron and Ordinary.

Br. Charge. pl. 58 cites Littleton, Discontinuance.

3. If a Parson, Patron, and Ordinary grant Land to $\&$ S. discharged of Tithes he shall hold it discharged. Per Doderidge J. Cro. J. 453. Mich. 15 Jac. B. R. in the Case of Doubitofte v. Curteene.

1 Rep. 44 a. in the Bishop of Winchester's Case.

Hob. 297. per Robert Ch. J. in the Case of Slade v. Drake.

(K) Patron and Ordinary in Time of the Parson. Their Power in Time of the Parson severally. Patron.

Fol. 339.

1. **I**f a Man recovers an Annuity against a Parson, and after releases to the Patron during the Time of this Parson, this shall extinguish the Annuity. 8. H. 6. 23. b. there it is put generally so. 41. E. 3.

See (L) pl. 15.

20. without mention whether it was in Time of the Parson, or in Vacation; But the Scire facias is brought against the Successor. *Quære* this.

2. During the Time of the Parson the Patron has not any Reversion in the Glebe. 8. H. 6. 24. b.

3. In time of the Parson the Patron has nothing to do in the Church. 11. H. 6. 4. b.

Godolph.
Rep. 191
cap. 17 S 12
cites S. C.

4. If the Patron grants a Rent by Fine out of the Church it being full, and after the Incumbent dies this Charge shall not bind the Successor; Because the Parson and Ordinary were not Parties thereto. 38. E. 3. 4.

5. If the Patron grants a Rent out of the Church it is void against himself; Because he has nothing in the Church. 38. E. 3. 4. b.

* Fitzh. Abr.
pl. 103. cites
H 33 E. 3.
but I find no
such Year in
the Year
Books.

6. If there be a Dean of the Free Chapel of the King of the Collation of the King, and he has an Advowson appropriate to him, another who has Right to the Patronage of the Advowson may release all his Right to the King, and this shall be good Release in the Patronage of the King. 33. E. 3. * *Aid of the King* 103.

7. In Scire facias upon a Fine, it was agreed per Knivet and Kirton, That a Fine levied by the Patron alone of a Rent out of the Land of the Glebe without the Parson, is not good to bind the Parson, and this seems to be where a Parson was at the Time of the Charge. Br. Charge. pl. 11. cites 38. E. 3.

Put note,
That it ap-
pears the
same Year
fol 41. that
the Grant
was by one
Deed, and

8. Debt against the Successor of the Parson upon a Grant of an Annuity by his Predecessor by Assent of the Patron and Ordinary, and for Non-payment to forfeit 40s. Nomine Pene, and Debt was brought of the Penalty, and so see that a Grant by Assent of the Patron and Ordinary, is as good as if the Patron and Ordinary had confirmed it. Br. Charge. pl. 13. cites 7 H. 6.

19.— And herewith agrees Littleton tit. ----

Patron and Ordinary made another Deed, but it is not expressed if it be a Confirmation, nor what Form it contains; But see the same Case Anno 8 H. 6. & 23. it appears that it was a Confirmation. Br. Charge. pl. 13.

9. Note for Law, That the Parson cannot charge without the Patron and Ordinary, [or] Dean and Chapter, where the Bishop is Patron, & e contra it seems where the Bishop is only Ordinary and not Patron; and 'tis said elsewhere also that the Patron ought to have Fee Simple, and this in his proper Right, as appears here by the Case of the Dean and Chapter with the Bishop, where the Bishop is Patron, and in the Case of Hill for the Parsonage and Glebe of Stoke upon Tyerne in the County of Salop. 33 H. 3. where the Parson, Patron, Dean and Chapter made the Assurance; Quod nota; and therefore it seems, That the Bishop was Patron there; And the Diversity is, That where the Bishop is Patron he hath Interest in it, but where he is only Ordinary he has Judicial Power, but no Interest, Note the Diversity. Br. Charge. pl. 40. cites 11 H. 6. 9.

10. It was agreed by 3 of the 4 Justices, that Parson has Fee Simple in Jure Ecclesiæ, and that *Wast* lies not for the Patron against the Parson. Br. Faux. Recov. pl. 51. cites 12 H. 8. 7.

11. If Patron confesses Action of the Land, a *Juris Utrum* lies for the Successor; per Brook. But this seems to be, where no Aid was prayed. Br. Faux. Recov. pl. 51. cites 12 H. 8. 7.

But Brooke
says, That
this seems
not to be
Law; For
it is given to the Successor, and the Patron has not the Franktenement nor Reversion, but the Franktenement is in Abeyance Ibid.

12. Per Pollard; The Patron may have a Writ of Error and Attaint of a Recovery had against the Parson. Br. Faux. Recovery. pl. 51. cites 12 H. 8. 7.

(L) Patron and Ordinary in Time of Vacation. Their Estate and Power in Time of Vacation severally. See Penfions. Patron.

1. **D**uring the Vacation, the Franktenement of the Glebe is not in the Patron. 8 H. 6. 24. b. The Ordinary shall have the Profits of the Glebe in the Time of Vacation, because it is Sanctuary, Et Non Negatur; but where the Church is dissolved, the Patron shall have it. Br. Dean &c. pl. 33. cites 9 H. 5. 9.

2. **B**ut it is in Abeyance. Litt. 144. And a Freehold can be in Abeyance in no other Case, but only in the Case of the Parson of a Church. D. 71 pl. 43. in Case of Withers v. Isham. — It is the same in Case of a Bishop, Abbot, Dean, Archdeacon &c. Co. Litt. S. 647. 342. b. — See Abeyance.

3. **T**he Patron has the Franktenement in Right during the Vacation. 8 H. 6. 24. b. The Patron has but Jus Praesentandi, and has no Interest. Arg. Cro. J. 53. Mich. 2 Jac. C. B. in Case of the King v. the Bishop of Winton and Campion.

4. **T**he Patron shall not take any Benefit of the Glebe during the Vacation. 8 H. 6. 24. b. Though the Profits of the Church during the Vacation are in the Incumbent upon his Induction, and not due to the Patron or Ordinary; (For if the Patron enters upon the Church in Time of Vacation, i. e. thereby is not any Disseisor, nor gains any Right. Sav. 18. [pl. 46. Patch 22 Eliz.] yet the Patron and Ordinary have such an Interest in the Revenues of the Church as that at Common Law they might have charged the same in Time of Vacation, which would have bound all succeeding Incumbents, because no other had any Interest at that Time, but they only. Watf. Comp. Inc. 8vo 748. cap. 48.

5. **I**f the Parson leases at Will the Parsonage and resigns, (by which the Will is determined) the Patron cannot enter upon the Lease and oust him, (for he has the first Possession, and the Patron has no Right to the Profits) 8 H. 6. 9. Admitted. Trespass of a Horse and Glebe broken; Chant said, That the Glebe was the Church-yard of D. and the House was the Church of D. and the Defendant is Patron, and A. the Parson there leased the Parsonage to the Plaintiff at Will, and after the Parson resigned, and the Defendant as Patron presented, and the Bishop inquired of the Right of Patronage in the Church, and the Defendant as Patron entered to shew his Exemption to the Patronage, and the Plaintiff by the Lease above held himself in &c. which is the same Trespass &c. Judgment si Actio; And by some it is no Plea for want of Colour. But Strange and Martin Justices, said clearly, that it is a good Plea. And the Reason seems to be, because Lay Gents cannot know the Law that the Lease is void by the Resignation. Br. Trespass, pl. 121. cites 8 H. 6. 9.

6. **T**he Patron shall not have any Action for Trespas Done in the Time of Vacation, 11 H. 6. 4. b.

7. **A**fter the Death of a Prebendary, the Dean and Chapter shall have the Profits. 33 E. 3. Aid of the King 103. per Thorpe.

8. **A**fter the Death of a Dean of a Free Chapel of the King, the King shall have the Profits of his Deanry; For it is at the Election of the King, whether he will collate a New Dean. 33 E. 3. Aid of the King 103. per Fitz.

9. **B**ut if the Dean had a Parsonage appropriated to him, the King shall not have the Tithes and Profits thereof. 33 E. 3. aforesaid, per Thorp.

Watf. Comp. Inc. 8vo. 748. cap. 40. cites S. C.

10. **I**f a Man has an Annuity, out of a Parsonage, and he releases to the Patron in Time of Vacation, this shall extinguish the Annuity. * Br. Deane &c. pl. 11. cites S. C. — For Releases, 21 H. 7. 41. Co. 5. Forde 81. b.

S. C. — S. C. cited 5 Rep. 81. b. Patch. 37 Eliz. C. B. in Ford's Case — S. P. 5 Rep. 11. a. Patch. 34 Eliz. in *For's Case*, cites 40 E. 3. 22. 18 E. 3. Avowry 7. 13 R. 2. Avowry 20. 14 H. 4. 4. Recordare longe. — Watf. Comp. Inc. 8vo 748. cap. 40 cites S. C. — Co. Litt. 266. a. S. P. and that it is good in respect of Privy.

11. If a Judgment in Annuity was against a Parson, and after in Time of Vacation he releases to the Patron, this shall extinguish the Annuity, 8 D. 6. 23. b. (But it does not appear whether the Release was in Time of Vacation or of Plenalty) Vide 7 D. 6. 38. b. 41 E. 3. 20.

Watf. Comp.
Inc. 8vo 748.
cap. 40. cites
S. C.

12. But if a Man who has Right to the Glebe Land releases to the Patron in Time of Vacation all his Right it is not good, because the Patron has not any Estate in the Land, 8 D. 6. 24. b. may be collected.

(M) Ordinary. [His Power in Time of Vacation.]

* 28 H. 8.
cap. 11.

1. In Time of Vacation, the Ordinary may give Liberty to any to hold the Parsonage for a certain Time (before a new Incumbent be) 8 D. 6. 9. (This was before the Statute of * H. 8. cap. which ordains, that the Ordinary shall sequester.)

2. The Ordinary shall have the Esplees and Profits during the Avoidance. 7 D. 6. 39. 11 D. 6. 4. b.

3. In Time of Vacation, if a Man has the first Possession of the Parsonage, yet the Ordinary may give Power to another to inquire of the Right of the Patron in the Church, upon a Presentment to him, and the Commissioner, and they who go there to shew their Right to the Commissioner, shall not be Trespassors. 8 D. 6. 9.

Br. Quare
Impedit, pl.
90. cites
S. C. —
S. C. Cited
Arg Roll.

4. If the King be Patron, and does not present to the Church, which is void, within six Months, the Ordinary shall not present, but shall sequester the Profits, and find one to serve the Cure till the King will present one. Per Keble. 14 H. 6. 21.

R. 453. Hill 14 Jac. in Case of Colt v. Glover — The Ordinary may sequester a Church *Donative*, if the Patron does not present. Arg. Roll. R. 453. in Case of Colt v. Glover : cites 3 Jac. Guer v. ...

5. During the Vacation the Ordinary may make a Lease. Arg. Roll. R. 453. Hill. 14 Jac. in Cam. Scacc. in Case of Colt v. Glover.

As to Mat-
ters of Pro-
visions &c.
made hereto-
fore by the
Pope, it may
be of little
Use to insert
any Thing
more here
than only to refer to the Statute 25 E. 3. and other Ancient Statutes made to restrain them. — * Br
Presentation, pl. 12. cites S. C.

(N.) Provision.

1. If the Provisee of the Pope has Possession of the Church before the Presentee of the King, he shall be preferr'd; but if the Presentee of the King has the first Possession, he shall be preferr'd. * 8 D. 4. 21.

(O.) Advowson.

(O.) Advowson. * *What.*

See Advowson,
* An Advow-
son, or as the
Term is, Jus

1. **A** *Advowson* is *Jus Mixtum*, because the Commencement of every Presentation commences by our Law, as by Presentation of the Lay Patron; and by the Law of the Church takes Effect, as by Ability, Non-ability, or Crimmofus, which appertains to the Ordinary. † 34 D. 6. 40. Per Allton.

Patronatus,
est potestas,
presentandi
aliquem in-
stituentem
ad Benefi-
cium Ec-

clesiæ simplex & vacans; and of other helps to, the Causes and Incidents of Advowsons, is described more amply in such Manner, Jus Patronatus est jus Honorificum, Onerosum, & Utile. In Effect this; A Patronage or an Advowson, is a Right to present to the Bishops or Ordinary a fit Person, by him to be admitted and instituted into a Spiritual Benefice when it becometh void, and he that has such Right to present is called Patron, who is thus described, Patronus est defensor Ecclesiæ, cui habet jus presentandi Episcopo aliquem, vel aliquem in aliqua Ecclesia, & in ea ab eo instituat. And he is so called, De Parrocinio, of Defence; because he should defend the Church, or a Similitudine Patris, sicut Pater filium, sic Patronus Ecclesiam, de non esse, deducit ad esse. He is called of Old German Advocatus; as that he should say, an Advocate of the Causes of the Church; and therefore the Inheritance is called Advocatio, or Advowson, or is devised De Vocando; because the Patron hath Power for the Presentation of a fit Person, by the Name of his Presentation. Dod. of Adv. 3. 4. Lect. 1. —† Dod. of Adv. 3. cites S. C.

(P) Chapel.

See Prohibition
Sec.

1. **A** Chapel of Ease is where there is a Church Parochial in the same Parish, and the Sacraments administered in the Parochial Church, and not in the Chapel. 8 D. 6. 32.

2. A Church Parochial cannot be a Chapel. 8 D. 6. 37.

3. The Chapel of Ease belongs to the Church Parochial, and Patron thereof. 8 D. 6. 32.

4. A Chapel is not a Temporal Inheritance, as an Advowson is. Arg. Sti. 101. cites D. 83.

5. A Chapel is not conveyed in Fines, and Recoveries and Entries, by the Name of a Tenement, nor in any judicial Proceedings; but Tenementa in a Grant may contain a Chapel. Arg. Sti. 101. Thin v. Thin.

6. The Nominee to a Chapel of Ease must have the Bishop's Licence, but who shall nominate whether the Patron and Rector of the Mother-Church, or the Builders, was not determin'd. Gibb. 158. The Case of the Chapel of St. John's in Holborn Parish.

Pol. 341.

(Q) Advowson. *Spiritual Promotion.* *What* shall be said a Spiritual Promotion.

1. **A** Deanry is a Spiritual Promotion, and not Temporal. D. 10 S. P. 13 Rep. Cl. 273. 37. By all the Justices.

Jac. in the Parishioners of St. Alphe's Case.—In Case of Fairfield and Gayre, Williams said that Knights have been Deans, and have had Deanries, but 'tis by the Special Dispensation of the Archbishop, and that he hath seen such Licences. D. 273. pl. 35. in Marg.—Yelv. 61. Pasch. 3. Jac. B. R. in the said Case of Fairchild v. Gayer, 'tis held by all the Justices, That Deans may be Laymen, because the Function is Temporal. And yet Williams J. said, That Laymen, who have Deanries, ought and always have had Dispensations from the Archbishop.—Brownl. 202. S. C. and P.—Dean and Chapter are a Body Spiritual, and annexed to the Bishop throughout all England. Per Hobart Ch. J. but Winch doubted, and said that a Dean may be a Layman, which Hutton confess'd, and said that it was the Dean of Durham, by special Licence and Dispensation of the King, but that is a rare and a fæ-

70. pl. 34.
Pasch. 8

cial Case, and is not common and general; and therefore not to be brought as an Example, which was granted by Hobart Ch. J. Winch. 65. Pasch. 21 Jac. C. B. Briggs's Case.

2. If the Nomination and Patronage of a Deanry be appointed to the King, his Heirs and Successors, and he appoints a Dean, yet this is a Spiritual Promotion. D. 10 El. 273. 37.

3. Clerk of a Parish is not. 13 Rep. 70. Pasch. 8 Jac. C. B. The Parishioners of St. Alphage's Case.

4. Church-Wardens are not. 13 Rep. 70. in the Parishioners of St. Alphage's Case.

7. The Lecturers in Cathedral and Collegiate Churches are of the Number of Ecclesiastical Promotions. Watf. Comp. Inc. 250. cap. 14.

See Donative.

(R) Advowson. Donative.

See (5) pl. 4 1. **A** Donative of the Gift of the King may be with Cure of Souls, in the Notes. Cro. C. 330. S. C. By Name of Bowderok v Mackaller. —Cro. C. 335. S. C. By Name of Mackaller v. Todderick —Cro. C. 355. S. C. —Cro. C. 361. S. C. —Jo. 143. S. C. by Name of Todderidge v. Mackalley

1. **A** Donative of the Gift of the King may be with Cure of Souls, as the Church of the Tower of London is a Donative of the Gift of the King with Cure. Mich. 9. Car. B. R. between Fletcher and Mackaller, per Curiam, where Information was brought upon the Statute of 31. Eliz. of Simony, for procuring him to be promoted to the said Church of the Tower for Money, & per Curiam it lies.

S. C. cited Show Parl. Cases 176 in the Case of the Bishop of London v. the Attorney General. —* The Re-

2. A Church Parochial may be a Donative, and exempt from ordinary Jurisdiction, and the Incumbent may * resign to the Patron, and not to the Ordinary; Nor can the Ordinary visit, but the Patron by Commissioners to be appointed by him. Co. Litt. 144. cites D. 1. Ja. B. R. Rot. 601. between Fairchild and Gayer, in Trespass for the Rectory Parochial Donative of St. Burien in Cornwall. Resolved.

signation is good both in respect of the Thing resigned, and of the Person to whom it is made; For it being a Donative, and exempt from ordinary Jurisdiction, the Resignation cannot be into his Hands, and the Incumbent shall not be constrained to keep the Church whether he will or no, if the Patron will not accept it, and because there is no Person to whom the Resignation can be made, but only into the Hands of the Patron it is good Per Cur. Yelv. 60. Pasch. 3. B. R. Fairchild v. Gayer. —Brownl. 201. S. C. —Mo. 765. S. C. —Cro. J. 63. S. C.

¶ The Ordinary has nothing to do with a Donative; which may pass by Gift to the Parson without Institution or Induction, as is said 8 Aff. 31. And the Donatives of the King are out of the Jurisdiction of the Ordinary, and not visitable by him. Dav. Rep. 46. b. Pasch. 5 Jac. B. R. in Ireland, in the Dean and Chapter of Ferne's Case.

S. C. cited Wats Comp. Inc. Svo. 520. cap. 14. —Wats Comp. Inc. Svo. 525. 206 cap. 15. cites S. C. —Popham Ch. J. said, That tho' a Church Donative in the Execution of the Charge be spiritual, yet the Patron may collate a mere Layman as well as the King may make a Temporal Man a Dean, Quod sepe accidit; But Gaudy, Fenner, Yelverton, and Williams contra Yelv. 61. Pasch. 3. Jac. in the Case of Fairchild v. Gayer.

3. But in such Case of a Donative Parochial a Man, who is merely a Layman, is not capable thereof, but a Clerk Infra Sacros Ordines is; For tho' he comes in by Lay Donation, and not by Admission and Institution, yet his Function is spiritual. Co. Litt. 601. the said Case of St. Burien said to be Resolved.

(S) Advowson. Church with Cure. *What* was a Church with Cure. [And *who* shall be said to have the *Curam Animarum*.]

1. **A** Prebend is not with Cure of Souls. 29. E. 3. 44. Admitted.

2. If there be a Vicar endowed, who is Presentative, and a Parson Presentative, it seems that the Parson has not the Cure of Souls but the Vicar. 5. E. 2. Quare Impedit 165. per Paston.

The Church of Westbourne in Sussex has a Parson and Vicar, and Both are admitted, instituted and

inducted and Both have Houses there. In Ejectment for the Rectory it was insisted for the Vicar, That the Vicar pays Synodals and Procurations, and other Charges of the Visitation only, and was Attendant upon the Ordinary, and reads divine Service, and officiated there, which the Parson did not above once or twice in the Year; And several ancient Institutions and Inductions of Vicars were produced, but they could not shew the Endowment itself; On the other Side it was insisted for the Right of the Parson, that all Sine-Cures are such either in respect of the Inability of the Parson as Impropriators, or in respect of Privilege of not being visitable, That it could not be a Sine Cura as to him, because he was instituted by the Ordinary, and therefore visitable by him. It was agreed per Cur. That as well Parson as Vicar may have Curam Animarum within the same Church; For there may be two distinct Patrons and two distinct Incumbents of the undivided Moieties of the same Church; And they paid no Regard to the Case in Roll Presentment 341. For both being Presentative, the Cure Prima facie is in both; And whether *Habitually* in the Parson, and *Actually* in the Vicar is Matter of Evidence, since every one that is instituted has Cure, tho' (Accipe Curam tuam & meam) be not in the Instrument of Institution, in which Observation Lord Coke [Co. Litt. 322] is mistaken. Sid. 426. Mich. 21 Car. 2. B. R. Clarke v. Pryn & Clark v. Heath.

Note, it was said, That there are several Churches in England which have Vicars endowed with Cure, and yet the Parson has concurrent Cure, and both take the Oath of Canonical Obedience, and both are subject to the Ordinary as to their Lives, Doctrine, and Repairs of Houses &c Ibid 42. — And after Conference with Sir George Palmer the Attorney General, he said, That the Law had been taken before to be, that every Institution supposed a Cure of Souls, yet by his Experience in his Office he found, that the King had several Donatives in Wales, and yet the Parsons thereof are presented and instituted by the Bishop as well as the Vicars; But he intends, That the Vicars are instituted to all the Spiritualties, and the Parsons to all the Temporalties, except such whereof the Vicar is endowed; And said he had seen two Precedents among the Antient Charters in the Tower to that Purpose. Ibid. — Vent. 15. S. C. by Name of Heath v. Pryn.

A Parsonage and Vicarage are two distinct Ecclesiastical Benefices, and the Parson and Vicar have Curam Animarum, the Parson *Habitualiter*, and the Vicar *Actualiter*. Per Noy Arg. Cro. J. 518. in Case of Britton v. Wade. cites 31 H. 6. 14. 17. E. 3. 76. 5 E. 2. Quare Impedit 165.

3. If an Abbot, or such like Spiritual Man had been Parson Appropriate before the Statute of Monasteries, he should have the Cure of Souls; For he differs from another Parson only in this, That he shall be Parson perpetual, and the other but for Life. Com. Grendon. 496. b.

4. A Donative of the King may be with the Cure of Souls, as the Church of the Tower of London; This is a Donative with Cure, and of the Gift * of the King; For till the Time of King John all Bishopricks in England were Donatives, and so they are at this Day in Ireland. 9. 6. Car. B. R. between Fletcher and Mackaller, per Curiam, in an Information upon the Statute of Simony, for taking the Church of the Tower (being a Donative of the King) for Money.

(R) p. 1. S. C. Fol. 342. S. P. There are also another Kind of Churches, which are

neither Presentative or Donative, but *Stipendiary*, and yet have Cure of Souls; as if there be an *Impropration*, and it has no Vicarage, but only a certain Stipend is given yearly to him that serves the Cure, and that is merely *Dative*, and at the Pleasure of the Improprator. 6 Mod. 232. in Case of Jacob v. Dallow.

(T) Patron of an Advowson, who; and how considered.
Where one has the Nomination, and another the Presentation.

1. **I**N Quare Impedit, the Plaintiff counted upon Fine, by which J. N. granted to W. P. and his Feme and their Heirs, That as often as the Chapel of B. voids, they shall present a Clerk to the Grantor, or his Heirs, and that they shall present him over to the Bishop; And per Curiam this is a Grant of the Presentation, but because it came to the King by Escheat, and he counted as above, but did not shew if he presented to the Grantor, and he refused to accept it, or if he accepted it, and would not present over to the Bishop, therefore it was Uncertain, and was Amended; and so see that the Grantee was Patron, and therefore he shall not be put to Writ of Covenant against him, who ought to present over, but shall have Quare Impedit. pl. 99. cites 24. E. 3. 69.

Dod. of Adv.

67. Lect. 12.

says, He

thinks the

Law to be

thus: If one

had the No-

mination and

another the

Presentation,

and the

Church be-

comes void,

if the Lapse

incur, and

he that hath

hath the

Presentation

only presents

to the Bish-

op, before

the Bishop

takes Benefit

of the Lapse,

without any

Nomination

of the other,

the Bishop in

this Case ought, and is bound to admit his Clerk, that he so presenteth as the Clerk of the Patron himself. If Respect be had of each other, then are they both Patrons after a Manner, and by Injury offered by every of them to the other, one of them may punish the other. As if he that hath the Nomination will present immediately to the Ordinary, he that hath the Presentation may bring a Quare Impedit or a Writ of Right of Advowson against him, as his Case requires; so if he that hath the Presentation refuses to present the Clerk nominated to him, or presents one himself without Nomination, the other shall bring a Quare Impedit or a Writ of Right against him, and his Writ shall be Quod permittat ipsum presentare &c. but in his Declaration he shall declare the special Matter.—And tho' the one has Writ to the Bishop, yet this shall not Oust the other of the Possession, And if the Parson makes a Lease or grants a Rent-charge, this Charge ought to be confirmed by Both; but in Writ of Annuity brought against the Parson, Aid is grantable only of him that has the Presentation; For this is in the right. Mo. 49. 147. Pasch. 5. Eliz. Anon.

The Writ

ought to be

Quod Per-

mittat ipsum

presentare;

but his De-

claration

shall be Spe-

cial, viz.

That the

Plaintiff

ought to no-

minate one,

3. Quare Impedit the Plaintiff made Title, because Fine was levied between J. N. and the Abbot of B. of the Advowson, and the same Abbot granted by the same Fine, that J. N. and his Heirs, at every Avoidance, shall name to him his Clerk, and he should present him over to the Bishop, and alleged Seisin accordingly, and that the Church is void, and he named a Clerk to the * Abbot, and he would not present him to the Bishop, by which he brought Quare Impedit, and it was Quod permittat ipsum Nominare Clericum &c. where it should be Presentare Clericum; and therefore the Writ was abated. Br. Quare Impedit, pl. 56. cites † 4 H.

4. 10. 11.

and that he ought to present him over to the Bishop, and the *Writ to the Bishop* upon a Recovery by the Plaintiff shall be, *Quod Episcopus admittat Clericum ad Denominationem* &c. Dod. of Adv. 65. Lect. 12.

—*All the Editions of Brook are (Evesque) but it seems it should be (Abbe).—[† It should be 14 H.

4. 10. 11.]

4. If a Man grants to me, that I shall name a Clerk, and he shall present him to the Ordinary, I am Patron; but if he grants to me, that I shall name two, and he shall present the one, I am not Patron, by reason that he has the Election; and Grant of Nomination and Presentation is all one. Per Justiciarios. Brooke says, Quære in whose Name the Letters of Presentation shall be made. Br. Quare Impedit. pl. 133. cites 14 E. 4. 2. S. C. cited Dod. of Adv. 65. Lect. 12. but misprinted, as 14 E. 4. (26) whereas there are not so many Folios in that Year; but it should be 14 E. 4. 2. b. and the Mistake seems to be by turning the (b) into (6). —[But] if a Man grants to me, that I and my Heirs shall name the Clerk to the Church of D. as often as it voids, and that the Grantor shall present the same Clerk to the Ordinary; In this Case I am Patron, and shall have Quare Impedit. Br. Quare Impedit. pl. 144. cites 14 H. 4. 11.

5. If he that hath the Nomination presents to him that hath the Presentation, he that hath the Presentation may disturb in two Manners, either by refusing the Parson nominated, or by presenting some other himself that is not nominated. If he * refuse to present him that is nominated to him, and Suit be commenced without any actual Presentation made by himself, then the Writ to the Bishop of him that hath the Nomination shall be, That he shall recover his Nomination, and that the Bishop shall admit such as the other hath nominated to the Presentor, according to his Grant of Nomination; but if the Disturbance, upon which the Suit is granted, be, because the Presentor, that should present the Parson nominated, hath presented some other himself without Nomination, then the Nominator shall immediately, without any Nomination at all to be made to the other that hath the Presentation, [have Writ] to remove the other Incumbent. Dod. of Adv. 68, 69. Lect. 12. * If the Presentor refuses to present the Nominator of the Nomination, no Action lies. Mo. 842. Paken. 13 Jac. in the Case of Ford v. Hofkins.

6. If one hath the Nomination, and another the Presentation, if such Right of Presentation accrues to the King, he that has the Nomination shall nominate to the Chancellor still, who in the Name of the King shall present to the Ordinary. And if the King presents without any such Nomination, the Nominator shall bring his Quare Impedit against the Incumbent only, because the King cannot be termed as an Usurper. Dod. of Adv. 69. Lect. 12.

7. If a Stranger presents, he that hath the Nomination and he that hath the Presentation shall join in Quare Impedit; the Book says, that each of them shall have Quare Impedit. D. 48. pl. 17. Marg. cites P. 5 Eliz.

(U) Incumbent. Who.

See (Q) pl. 2.

THE Incumbent after a Recovery against him in Quare Impedit continues Incumbent de facto till Presentment by the Recoveror. 2 Roll. R. 62. Mich. 12 Jac. B. R. in the Case of Whitler v. Singleton.

2. Where there is an Avoidance de Facto, and the King, supposing he hath a Title to present by Lapse, doth accordingly present, when in Truth he hath no such Title, and a Recovery is had against him by one who had no Title; tho' he which comes in by such Lapse is not Incumbent, nor gains the Patronage, yet he is an Incumbent as to all Ecclesiastical Things (viz.) To have Offering, Tithes &c. Hutt. 66. Mich. 21 Jac. The second Resolution in the Case of Rudd v. Bishop of Lincoln.

3. If the King presents and mistakes his Title his Presentment is void, and the Presentee is no Incumbent. Arg. Het. 51. Mich. 3 Car. C. B. in Thomson's Case. cites 6 Rep. 26. Green's Case.

But where such Presentment in the Principal Case is void for

Dilatation, the Court denied a Prohibition, because that he was now Incumbent, and they would not take Notice of the ill Presentment of the King. But in Case of Simony, the Statute makes the Church void, and then the Judges may take Notice of that, and grant a Prohibition if the Parson tues for Tithes. Het. 51. Thomson's Case. — Litt. Rep. 67. S. C.

4. Possession

4. *Possession as Incumbent* is not of the *Incumbency* itself. Per Richardson Ch. J. Litt. R. 204. Trin. 5 Car. C. B. in *Pruitt's Case*.

For more of Parson and Patron in General, See *Appropriations, Dismes, Donative, Prohibition*, and other proper Titles.

Presentation.

* A Presentation is the Nomination of a Clerk to the Ordinary to be admitted and instituted by him to the

(A. a) *To what Thing* a * Presentation may be.

1. **B**EFORE the Time of King John, the King and others, Founders and Patrons of Priories or Abbies, were wont to present Priors or Abbots. 11 H. 4. 68. b.

Benefice void; and the same being in Writing, is nothing but a *Letter Missive* to the Bishop or Ordinary to exhibit to him a Clerk to have the voided Benefice; the formal Force hereof resteth chiefly in these Words (*Præsentis vobis Clericum meum*) Dod. of Adv. 63. Lect. 12. cites 13 H. 8. 14. b. And says, That therefore in our Books of Law an Advowson is call'd nothing but a Nomination or Presentation, a Power to enable another to have the Benefice, which notwithstanding the Patron cannot enjoy.

2. But a free Election was granted by King John to the Priors. 11 H. 4. 68. b.

3. It is good usage that the Abbot shall name a Monk to the Patron of the Priory, which is a Cell of the Abby, and the Patron shall present him over to the Bishop, and so shall be instituted. 11 H. 4. 68. b.

4. So it is a good usage, that the Covent of a Priory shall elect a Prior, and shall nominate him to the Patron, and he shall present him over; and if they do not choose within five Months, that the Patron may present whom he please. 30 E. 3. 21. b.

5. A Presentment may be to a Deanry. 17 E. 3. 40. Adjudg'd.

6. A Presentment may be to an Hospital. 21 E. 3. 6. b.

A free Chapel may be by two Means,

7. A Presentment may be to a Chapel. 14 H. 3. Quare Impedit. 183. Adjudged.

the one by Grant of the King to make it Donative, and the other to make it Presentative to the Ordinary, and then the Ordinary may meddle, and may present by Lapse; Contra, Where it is Donative by the Founder and his Heirs, and there the Ordinary cannot visit it; and when Free Chapel Donative is void, the Founder may re-take it, and not appoint any other Incumbent. Contra, of a Presentative. Br. Presentation. pl. 45. cites 6 H. 7. 14. Per Keble.

See (B. a) pl. 2. — S. P. Watf. Comp. Inc. Svo 207. cap. 13.

8. If a Stranger presents to a Donative, and his Clerk is instituted and inducted thereupon, yet it is nicely void. Co. Litt. 344.

See Donative.

(B. a) *What Act or Thing will make a Church Presentative*, which is not Presentative of itself.

S. P. Cro J. 63. Pasch. 3 Jac. B. R. in the Case of Fairchild v.

1. **I**F the Patron of a Rectory Parochial Donative presents thereto, and his Clerk is admitted and instituted; this is now become Presentative, and never shall be Donative afterwards. Co. Litt. 344. Gayer. — So of a Chapel Donative. Br. Corporations. pl. 76. cites old Natura Brevium 35. — So of a Chapel annex'd to another Church Br. Quare Impedit. pl. 39. cites Fitzh. tit. Quare Impedit. 151 18 E. 3. 15. — Br. Presentation. pl. 9. cites 47 E. 3. 4. — So if an Abbot Parson in possession presents. Br. Corporation. pl. 76. cites Old Nat. Brev. 35. — So if a Man presents to an Abbey Election. Br. Corporation. pl. 76.

A private

A private Act of Parliament divides one Parish into three; and enacts, that the Right of Patronage and Presentation shall belong to the Dean and Chapter of D. in such Manner as the Nomination or Presentation of the Old Church did, and not otherwise. The Old Church was a Donative. The new Churches shall be presentable. MS. Tab. Tit. Advowson. Feb. 19, 1717. *Shirt v. Carr.*

2. But if a Stranger presents thereto, and his Clerk is admitted and instituted, yet this shall not make it Presentative, because it is merely void. Co. Litt. 344.

S. P. Watf. Comp. Inc. 8vo. 182. cap. 12

S. P. Watf. Comp. Inc. 8vo. 324. cap. 15.

3. If the King presents to a Chapel by Name of a Church, it shall lose the Name of the Chapel; quod nota, Br. Presentation. pl. 9. cites 47 E. 3. 4.

4. Tho' usually a Free Chapel is Donative, yet by the Foundation, or after by Composition, it may be Presentative. Watf. Comp. Inc. 8vo. cap. 12.

(C a.) Presentment to the Church. *What Persons may present, and who shall have the Presentment.*
The King or others.

Fol. 343.

1. If a Prebendary of a Prebend be elected Bishop, and after the King grants the Temporalties to him, and afterwards he is consecrated, the Bishop shall have the Presentment to the Prebend, and not the King, because it is not made void till Consecration, at which Time he was Patron; for the [Bishop in Respect of the] Bishoprick was Patron. 41 E. 3. 5. b. adjudged. 46 E. 3. 34. accordingly, where the Incumbent of an Hospital is created a Bishop.

Dr. Spencer, who was one of the Prebendaries of Ely, was made Dean by the King; so that the Prebend was avoided by

Cession. The Question was, Who should present to the Prebend the King, or the Bishop to whom it did belong, if this Cession had not intitled the King? The Judges seemed to incline for the King, but it was adjourned for further Argument. Freem. Rep. 256. pl. 272. Trin. 1678. The King v. Bishop of Ely.

2. But if the Incumbent be made Bishop by the Pope, and after the Temporalties are granted to him, the King shall present thereto, tho' the Bishop be Patron. 46 E. 3. 32.

3. If the King creates an Incumbent of a Common Person a Bishop, the Patron shall present, and not the King. 41 E. 3. 5. b. admitted, and 44 E. 3. 15. b. admitted. 46 E. 3. 32. admitted. 7 H. 4. 25. b. 26. admitted. 11 H. 4. 38. 21 E. 3. 40. admitted. For the King made Title to it as Guardian in Chivalry of the Patron. D. 6 El. 228. 48. and 7 El. 223. 12. adjudged as it seems. But the Law is otherwise now generally taken and agreed, scilicet, That the King shall have the Presentment. Contra. H. 29 El. B. R. *Holland's Case*.

Where an Incumbent is created a Bishop, the King or other Patron may present to his Ancient Benefices. Quære of the Pa-

tron For some say now, that in such Case of Creation the King shall present to all, of whose Patronage they are. And per Norton, *Bastard* shall not present to a Church; Quære of this Usage; for it seems that the King shall not present to another's Advowson. Br. Presentation, pl. 14. cites 11 H. 4. 37. — *Parson is made a Bishop*; the King shall present not only Hac Vice, but Toties Quoties. 3 Lev. 377. Mich. 5 W. & M. C. B. The King v. the Bishop of London. — The King has the same Prerogative in Churches newly erected, as in old Churches, to present on Promotion of a Parson to a Bishoprick. 3 Lev. 382. Mich. 5 W. & M. C. B. The King v. The Bishop of London. — It should be 44 E. 3. 25. b. pl. 34 — † Mo. 399. Wright's Case. S. P.

4. If a Church voids, to which the Bishop has Title to present as Patron, in Respect of the Temporalties, if he dies before Presentment,

For it was said in the Case D. v. the

that the Temporalities came in to the King's Hands. Br. Presentation, pl 4. cites 44 E. 3. 3. Per Thorp & Belknap.—The Truth of the Case was, that the Bishop presented his Clerk, who was Admitted, Instituted and Inducted before Dinner, and he died the same Day after Dinner; but the Presentee was a Provisor, and had not Corporal Possession in Life of the Bishop. Ibid. [But quere as to the Induction, tho' it is so mentioned in the Year-Book and in Brook; and brook says Sic vide, that it is no Plenarty against the King till Induction.]—Br. Plenarty, pl. 3. cites S. C.—And where the King has the Temporalities in Time of Vacation, and dies, the next King shall have them, and not the Executors, and yet it is but a Chattel. Br. Prerogative, pl. 85. cites 24 E. 3. 42.—*Where the King is intitled to the Possession, and finds the Church void, he shall have the Presentation;* and so it appears often in F. N. B. Br. Presentation, pl. 29.—*As in Quare Impedit the Bishop of D. was Patron of C. the Church voided, and the Bishop gave the Presentation, scilicet, made Collation to W. C. and after the Bishop died the same Day that he gave it, and before Institution and Induction, by which the King had Writ to the Bishop, and the Gift void.* Br. Presentation, pl. 29. cites 24 E. 3. 30.—* Ibid. pl. 10. cites S. C.—Br. Quare Impedit, pl. 42. cites S. C.

5. And if Abbot or Bishop be Patron, and the Church voids, and the Abbot dies, by which the Temporalities come into the Hands of the King, and after Livery is sued by the Successor out of the Hands of the King; the King shall have the Presentment. 7 D. 4. 25. b. 18 E. 3. 1. 20. 24 E. 3. 26. b. Curia.

6. If during the Vacancy of the Archbishop of York, and the Temporalities being in the Hands of the King, the Deanry voids, the King shall have the Presentment thereto, tho' by Composition between the Archbishop and the Chapter, the Chapter is to elect him; for De Jure the Patronage thereof belongs to the Archbishop, and the Composition cannot bind the King who comes in Paramount, as Supreme Patron. 17 E. 3. 40. adjudged.

In Quare Impedit the Plaintiff said, that J. S. was seised of

the Manor of D. and the Advowson appendant and presented, and after gave the Manor cum pertinentiis to the Grandfather of the Plaintiff in Tail, who was seised, and had Issue 4 Daughters, and died, and that he is Heir to the Eldest, and the Tenant in Tail died, and the four Daughters entered into the Manor and into other Land, and made Purparty of the Land and Manor, except the Advowson, and the Advowson remained to them in Common, the Eldest Daughter died, the Church voided, and they could not agree in the Presentment, by which the Presentment belonged to the Plaintiff as Son and Heir of the Eldest Daughter, who presented and the Defendant disturb'd him; the Defendant said that the Land was held of the King, and he seised, and the three others sued Livery of their Parts (for they three were of full Age) and the Plaintiff, Son of the Eldest Sister, was within Age, and in Ward of the King, and the Church voided and the King presented, and at full Age the Plaintiff sued Livery of his Part, and all in Common sued Livery of the Advowson, and now the Church is void again, by which it belonged to the Defendant, as Heir to the second Daughter, to present. Laicon said the Presentment of the King shall be said in the Right of all the Parceners, and not in Right of the Eldest only; and therefore now, because they cannot agree in Presentment, it belongs to the Eldest; which Choke denied, and said that it shall be the Turn of the Eldest only, which the King took; But the Court was against him; quod nota; by which the Defendant pleaded Partition to present by Turn. Br. Presentation, pl. 35. cites 38 H. 6. 9.—Br. Prerogative, pl. 44. cites S. C.—Br. Livery, pl. 25. cites S. C.

* S. P. Br. Presentation, pl. 48. cites S. C. For he who has an Office of Sovereignty, cannot use an inferior Office —

† Br. Deposition, pl. 3. cites S. C.

8. In Quare Impedit it is agreed, That where an * Incumbent is created a Bishop, his Ancient Benefices are become void in Fact, and the Patron may present; but † where a Parson takes several Benefices incompatible without Licence or Plurality, this is a Voidance in Law, and he ought to be deprived of one of those before the Patron can present, and the Patron may sue the Deprivation to the Ordinary. Br. Presentation, pl. 14. cites 11 H. 4. 37.

9. Conusee was of a Statute upon which a Manor is extended, to which Advowson is appendant. Per Cur. The Advowson may be extended; and if it become void during the Conusee's Estate, the Conusee may present. Ow. 49. Mich. 32 & 33 Eliz. Arundell v. Bishop of Gloucester.

10. It was adjudged that *Trustees of a Term* for 500 Years, for the railing 6000 l. should present. See Lutw. 902. b. Patch. 11 W. 3. B. R. in the Pleadings of the Release. Bishop of Exon and Heskett v. Freek.

11. If *A. sells an Advowson* to B. but before the Conveyance to B. and during the Seisin of A. the Church becomes void, tho' it remains vacant till after the Conveyance to B. yet B. can't present. 2 Lutw. 1631. Trin. 2 Ann. C. B. Crane v. the Bishop of Norwich.

12. *Excommunicated Persons* were said Per Keble to have no Ability to present to a Church. Wentw. Off. Execut. 16.

Excommunicated may present to their Churches, and their Presentations shall stand good till such Time as they be avoided. Watf. Comp. Inc. 8vo. 249. cap. 13. cites Parson's Law, cap. 10. But adds a Quære whether the Bishop may not refuse the Presentees of such Persons, and so suffer the Churches to lapse to himself.

13. If an *Alien* born purchases an Advowson, and the Church becomes void after Office found that he is an Alien, the King shall present. Watf. Comp. Inc. 8vo. 179. cap. 11. cites Parson's Law, fol. 7. cap. 10.

(Da.) In what Cases the King shall present.

1. If A. be found in Ward by Office, for Land held in Capite, and that he is seised of an Advowson in Fee, or that he is of full Age, and after his full Age, the King being intitled to a Livery, A. tenders his Livery, and after the Church voids before Livery sued, but after Livery is sued without any Default made after the Tender, yet the King shall present; for tho' the Livery is discharged if he dies before Livery sued, as *Hale's Case* is, yet the Possession of his Land and of the Advowson is not * out of the King till the Livery sued out. This is the Course of the Court of Wards.

* Fol. 344.

2. Tho' it be admitted, that if the Incumbent of a common Person be created a Bishop, that the King shall have the Presentment to the Church for this Turn by his Prerogative, yet it seems if the King grants to the Incumbent before he is created Bishop, a Dispensation Retinere the Church with his Bishoprick, and after he is created Bishop, and dies Incumbent, it seems the King shall * not present to his Church by his Prerogative, because the Church is not void by his making him Bishop, in which Case the Prerogative gives the Presentment to the King, but by Death of the Incumbent, in which no Prerogative holds Place. Co. Ent. 474. *Hale's Case*, there pleaded that in such Case the Church voided by Death, and admitted that it appertains to the Patron to present upon his Death.

* S. C. and P. cited Arg. Show. 489. Mich. 5 W. & M. in Case of The King v. Dr. Birch — And cites D. 428. b. Parkhurst's Case. — And 233. d.

3. If the King seises an Advowson without Cause Ignorans tituli sui, and after the Advowson voids, and he, who Right has, comes and has Ouster le Main cum Exitibus, yet he shall lose the Presentment Hac Vice, for nothing passes by the Word (Exitibus) but Rents and Profits of a Thing, and not the Presentment; for it is not Profit to the Patron, but Pre-eminence, and the Profit is to the Parson, and if the Patron takes the Profits it is Simony. 24 E. 3. 29. and Brook Issues 21. 26.

The Case was, that a Man who held of the King in Chief held another Manor with an Advowson Appendant of another for Term of Life,

the Reversion to J. N. and dy'd, the King seised all, and the Advowson voided, and he in Reversion sued to the King, and obtained Ouster le Main cum exitibus of the Manor, (and it is said there, that the King has Right in this Case to seise, but not to retain;) He in Reversion presented, and the King brought Quare Impedit, bearing Date before the Ouster le Main, and the King recovered the Presentment; For by the Forfeiture the Presentation was vested in the King by reason of his lawful Seizure of the Land of his Tenant, Ad quod &c. and the Ouster le main cum exitibus does not give the Presentation; For this is neither Issues nor Profits, but was a Thing vested in the King, and yet by Livery of the Land to him who Right has, Fees and Advowson shall pass, but not Presentations vested before. Br. Presentation, pl. 28. cites 24 E. 3. 50. — Br. Prerogative, pl. 31. cites S. C. [And both Roll and Brooke are Right; that in Page 29 is pl. 16 and the other in Page 59. is pl. 48.]

Where the Church voided after the Temporalities came into the Hands of the King, and the King died, and they came to the After-King, the Successor King shall not present by reason of the Statute 25 E. 3. Pro Clero, cap. 1. [which see Rast. 112.] That the King should not present in another's Right of any Avoidance but in his own Time. Br. Presentation, pl. 13. cites 11 H. 4. 7.

4 If a Prebend voids, the Temporalities being in the Hands of the King, the King shall have the Presentment. 18 E. 3. 31. b. 21 E. 3. 5. adjudged, 29, 30. 24 E. 3. 26. b. Curia. 1 E. 3. 22. b. 5 E. 2. Quare Impedit 165. Adjudged in Case of a Vicarage. 19 E. 2. Quare Impedit 178. Adjudged of a Vicarage, though laid that it was Spiritual.

It is no Plea that it did not void during its being in the Hands of the King, by reason of the Death of R. late Bishop; For if the Temporalities were in the King's Hands by Death of any other, or by other Means, yet the King shall present. Br. Quare Impedit, pl. 94. cites 24 E. 3. 26. — So if an Advowson be void by 6 Months, at which Time the King is seized of the Temporalities of the Bishoprick, the King shall present to this Advowson as the Bishop should do. F. N. B. 34 (G) — Where it is awarded, that the Temporalities of a Bishop be seized into the King's Hands, the King shall take Consue of them, and shall present to an Advowson without Office; For the Temporalities of a Bishop are always of Record in the Exchequer. Br. Office de vant &c. pl. 17. cites Fitzh. tit. Scire facias 113. 21 E. 3. 30.

5. If a Church of the Patronage of the Bishop voids after the Death of the Bishop, and before Seifure of the Temporalities, yet the King shall have the Presentment. 12 E. 3. Quare Impedit 56. per Shard.

The King shall not have Presentment to the Advowson in Gress by the Ward of an Infant who is in Ward for other Lands; per Brian. But all the King's Serjeants contra; for, because the King has the Body, therefore he shall have the Presentations. Br. Presentation, pl. 42. cites 3 H. 7. 5.

6. So if the Tenant of the King dies, and after, before Seifure of his Heir in Ward, a Church voids, the King shall have this Presentment. 12 E. 3. Quare Impedit 56.

7. If the Tenant of the King has Title to present to an Advowson which is void by six Months, and after the Tenant of the King dies before the Bishop presents by Lapse, his Heir within Age and in Ward of the King. Now the Bishop shall not present by Lapse, but the King shall present. Fitz. Nat. 35. a. and there vouches 18 E. 3.

Quare Impedit by the King; the Tenant of the King had Issue three Daughters and died, and the Temporalities came to the King by his Prerogative, and Partition was made in Chancery, and this Advowson allotted to the one who took Baron, and had Issue and died, the Issue within Age and in Ward of the King, and the Prebend voided, and the King presented, the Defendant said, That after this the three Daughters made Partition to present by Turn, and that the first had her Turn, and then the Second, and the third took the Defendant to Baron, and had Issue, and died, and this Partition in Chancery the King was ascertained of his Tenant of Record, and this new Partition without Licence of the King is an Alienation in Law without Licence, therefore Judgment pro Rege; For it was agreed, that though Partition be made between Parceners, they are yet in by the common Ancestor and may vouch as Heir, and every one shall have Advantage as Heir, yet by the Partition in Chancery, the one was sole Tenant [to the King] of the Advowson, and by the last Partition to present by Turn all are Tenants thereof, and Writ of Right of Advowson shall be brought against all, and before against every one alone, and so the King was a Stranger to his Tenant [by the Partition which could not be without Licence.] Quod Nota; and therefore the King recovered

8. If there are three Coparceners of an Advowson, whereof one is within Age, and in Ward to the King, and the other two of full Age sue Livery with Partition, saving the Prerogative of the King, to present to the Avoidances during the Minority of the Ward, and after the Church voids during the Minority, the King shall present. 31 E. 3. Quare Impedit 1. Adjudged.

9. If there are three Coparceners of an Advowson, whereof one is in Ward to the King, who grants her over to another with Knights-Fees and Advowsons, and after the other two being of full Age sue Livery of the King with Partition to present by Turn, scilicet, the eldest first, the 2d. in the 2d. Place, and the Ward last, saving the Prerogative of the King for Cause of the Purparty of the Ward to present Prima Vice si Ecclesia vacare contigerit during her Minority, and after the Church voids during the Minority of the Ward, the King shall present, because the Partition was after the Grant of the Wardship over &c. and so the Prerogative remains in the King. 31 E. 3. Quare Impedit 1. Adjudged,

vered. Br. Quare Impedit, pl. 73 cites 21 E. 3. 30, 31. — And it was said, that where the King has Advowson in Common with others, as by Cause of Nonage of an Infant, who has Title to presently Turn; or otherwise, that the King by his Prerogative shall have the Presentment at every Voidance so long as any Parcel of the Advowson remains in his Hands. Brooke says, *Quare inde*; For this is a Partition; But if no Partition was, then the King by the Interest of the one Coparcener shall have the whole Presentation. Ibid. — Br. Alienation, pl. 7. cites S. C. — Br. Prerogative, pl. 21. cites S. C. [* Br. is, (Et ille est Estranger del Roy de son Tenant) but the Year Book is as translated]

10. The Bishop of Ely said to me, that he had seen a *Presentation in the* Ever since
time of King E. 3. made by the said King, whereby he presented to a Be- this Case was
nefice Pro illa Vice which was of another's Patronage, by these Words, abridg'd by
Ratione Prerogativæ suæ, which Benefice voided *by reason that the King* this Preroga-
had made the Incumbent thereof a Bishop, who was consecrated. So that tive has been
when Benefices become void by making of an Incumbent a Bishop, the enjoyed by
King shall present to all his first Benefices Pro illa Vice, whosoever is the Kings
Patron of it; Quod Nota. Br. Presentation, pl. 61. cites 5 M. 1. of England,
and there
are no Pre-

cedents that the Patron has presented upon the Promotion of his Incumbent; Per Cur 4 Mod. 210.
in delivering the Judgment of the Court in the Case of the Attorney General v. Bishop of London,
Dr. Lancaster, and Dr. Birch

(E. a) In what Cases the King shall present, *where Chattel vests.* Fol. 345.

1. **I**f the Tenant of the King has an Advowson which voids, and
after dies his Heir in Ward to the King, the King shall have
the Presentment, and not the Executor of the Father. 18 E. 3. 21.
12 E. 3. Quare Impedit 159. Though the Heir be of full Age.

2. The Law would be the same though Lapse had incurred to the
Ordinary in time of the Father, if the Ordinary had not collated be-
fore his Death. 18 E. 3. 21.

3. If the Tenant of the King has an Advowson which voids, and
the Tenant presents, and his Clerk is admitted and instituted, and be-
fore Induction the Patron dies, and the Advowson comes by Wardship
to the King, he shall present; For the Church is not full against
him before Induction. 38 E. 3. 9. by Thorpe. 21 E. 4. 34. b. said
to be adjudged in the 40 of E. 3. Br. Pre-
sentation,
pl. 17 cites
38 E. 3. 9.
S.P. but that
among com-
mon Persons
it is other-
wise

4. If a Church of the Patronage of a Bishop voids in Time of the
Bishop, and after the Bishop dies, the King shall have the Present-
ment by reason of the Temporalities, and not his Executor. 21 E.
3. 6. b. 50 E. 3. 20. 9 D. 6. 16. b. 29 E. 3. 44. 24 E. 3. 30. Ad-
judged.

5. If a Church of the Patronage of a Bishop, Abbot, or Prior
voids, and the Bishop, Abbot, or Prior presents, and after dies be-
fore Institution, the King shall have this Presentment by his Prerog-
ative. Liber Parliamentorum, 21 E. 1. The Prior of *Bermonsey's*
Case, adjudged in Parliament. 24 E. 3. 30. Adjudged.

6. So if the Bishop, Abbot, or Prior dies after Institution of the
Clerk, and before Induction, the King shall have this Presentment
by his Prerogative. 11 D. 4. 9. by all the Justices. Fitz. Nat. 34.
R. 36 R. 38 E. 3. 4. Hobart's Reports 208. *See after Clau-*
ture in a Pre-
sentment, if he
dies before
Induction,
by which
per Cur

the Temporalities come to the King. Br. Presentation, pl. 13. cites 11 H. 4.

7. Contra Liber Parl. 21 E. 4. 24 E. 3. 30. Admitted per Cu-
riam, saying, *Denum Nullum* [est] if Institution be not made in
his Life.

8. If the King has an Advowson by Cause of a Wardship, and grants
it to another during the Minority of the Ward, and after the Church
4 M voids

voids, and continues void till the full Age of the Ward, by which the Estate of the Grantee is determined, yet the Grantee shall have the Presentment, and not the King. Contra 29 E. 3. 8. b. Admitted by Issue.

An Avoidance belonging to a Bishop who died, by which the Temporalities came into the Hands of the King, belongs now to the King. Br. Quare Impedit. pl. 42. cites 50 E. 3. 26 — Br. Presentation, pl. 10. cites S. C.

9. If Lapse incurs to the Ordinary, and before the 6 Months past the Ordinary is translated or dies, it seems that the King shall have the Presentment, and not the Ordinary or his Executors, or the Guardian of the Spiritualities. B. 40 El. B. Dubitatur. Hobart's Reports 280. in Case of Death.

See (C) pl. 4.

* This should be 44 E. 3. 3.

10. If a Bishop has Title to present to a Prebend, and presents his Clerk, who is instituted and inducted in the Morning, and after Dinner the same Day the Bishop dies, by which the Temporalities come into the Hands of the King, yet the King shall not have this Presentment. * 43 E. 3. 3.

(F a) Presentment to the Church. Who shall present.

1. **O**F Common Right the Patronage of the Deanry of the Archbishoprick appertains to the Archbishop, and he shall present to the Avoidance. 17 E. 3. 40. b.

Fol. 346.

2. But by Composition it may be Elective by the Chapter, and yet the Patronage shall remain in the Archbishop. 17 E. 3. 40. b.

3. The Patronage of a Prebend appertains to the Bishop, and he shall present thereto. 17 E. 3. 40. b.

If a Vicarage happen void, and before the Parson presents he is made a Bishop &c. yet he shall present to this Vicarage because it was a Chattle vested. F. N. B. 34. (N)

— * Watf. Comp. Inc. 8vo. 248. cap. 13. cites S. C. And Dr. Watson conceives, that if the Parsonage be filled before the Vicarage, yet the Right of presenting to the Vicarage remains in the Patron of the Parsonage. Quare.

5. If the King grants to an Abbot and his Successors, that the Monks shall have the Temporalities during the Vacation; now if the Advowson happen void during the Vacation, the Monks shall present to the same. F. N. B. 33. (U) cites Mich. 30 E. 3.

See Recusant.

6. By the Statute 3 Jac. 1. cap. 5. a Popish Recusant Convict is disabled to present &c.

(F. a. 2) Who shall present in respect of Estate.

S. P. If he presents within the 6 Months. Br. Quare

Impedit. pl. 67. cites 38 E. 3. 35. S. C. — So of Tenant pur Autre vie, or * Termor, where their Interest determines after Voidance and before Presentation. Ibid. Per Finch. — Br. Quare Impedit. pl. 67. cites S. C. and P — * S. P. Br. Presentation pl. 22. cites it as said elsewhere — † It should be 38 E. 3. 36.

Where a Man grants the next Pre-

2. Where a Man grants Proximum Presentationem, and dies, his Heir being in Ward of the King, and the Church voids, the King shall have the Presentation,

Presentation, and not the Grantee; Per Wilby. Brooke says, Quære inde, because it seems to be contrary to Law. Br. Presentation. pl. 19. cites 21 E. 3. 38. Presentation of an Advowson, if the Grantor dies,
and the Church voids, the Grantee shall have the Presentation, and not the Lord in Chivalry, of whom the Land and Advowson is held, by reason of the Custody of the Heir within Age; for the Lord shall not oust the Grantee, Termor, nor such like. Br. Quare Impedit. pl. 121. cites 5 H. 7. 36. by the best Opinion.

3. It is good Title for the Lord to present where the Heir enters for Condition descended, he being within Age; for he is in as Heir, and shall be in Ward; and the Lord shall present. Admitted without Argument. Br. Quare Impedit. pl. 106. cites 39 E. 3. 37.

4. In Quare Impedit, if Baron is seised of an Advowson in Jure Uxoris, as in Dower, and the Church voids, the Feme dies before Disturbance, and after the Baron is disturb'd, he shall have this Presentation. Per Thirn, quod non Negatur. Br. Presentation. pl. 15. cites 54 H. 4. 12. S.P. Per Finch. Br. Presentation. pl. 18. cites 18 E. 3. 56. — S.P. Co.

Litt. 120. — S. P. That if the Feme dies without Issue, so that the Baron is not intitled to be Tenant by the Courtesy, yet he shall have the Presentation. Per Newton. Br. Presentation. pl. 22. cites 21 H. 6. 56. — Watl. Comp. Inc. Svo. 121. cap. 9. says, that tho' the Wife never did present to the Church, but died before it voided: the Right of presenting during the Husband's Life is lodged in him as Tenant by the Curtesy, tho' his Wife had but a Seisin in Law, because he could by no Industry attain to any other Seisin, cites 1 Inst. 29. a.

5. Where two Churches are united, there each Patron in his Turn shall have Quare Impedit, De medietate Advocationis; for the Advowson is sever'd in Right and in Possession there; But contra between Coparceners, Tenants in Common, and the like; for there the Advowson is not sever'd, and therefore the Writ shall be there De Advocacione Medietatis. Br. Quare Impedit. pl. 107. cites 14 H. 6. 15.

6. If a Parson be outlaw'd in Writ of Trespass, the Church being void, the King shall have the Presentation; which is adjudg'd Anno 22. inter Aff. Br. Presentation. pl. 22. cites 21 H. 6. 56. Per Newton.

7. In Quare Impedit the Case was, That a Prior seised of 3 Acres and Advowson Appendant, and the Master of the College seised of 2 Chambers, he exchanged by Indenture, and the Prior enter'd into the Chambers; but the Master died, and did not enter into the 3 Acres, and his Successor brought Quare Impedit at the Avoidance. And Per Danby clearly, a Man cannot present to the Advowson Appendant, if he has not the Land to which &c. But Per Moyle, the Seisin Tempore Vacationis is not traversable. And so Littleton and Moyle against Danby and Needham &c. Br. Presentation. pl. 36. cites 9 E. 4. 38.

8. In Quare Impedit it was agreed, That if a Man be seised of an Advowson in Fee, and the Church voids, and he dies, the Executor shall have the Presentation and not the Heir. Br. Presentation pl. 34. cites * 21. H. 7. 22. Contra 3 Lev. 47. per tot. Cur. For all is done in one Instant, the

Descent to the Heir, and the Falling of the Avoidance to the Executor; And where two Titles concur in an Instant the most ancient shall be preferred, As in Case of Jointenants, the one devises his Part, the Title of the Devisee, and of the Survivor fall in one Instant, the Title of the Survivor being the most ancient Right shall be preferred. Mich. 33 Car. 2. C. B. Holt v. the Bishop of Winton. —

* It should be 21 H. 7. 21.

9. A Manor, to which an Advowson was appendant came to Queen Mary by an Attainder of the Patron the Earl of Northampton, who had only an Estate for Life in it, and she made a Lease thereof to R. & W. for forty Years, if the Earl should so long live. The Church became void, and one Twiniko, who claimed not under the Lease to R. & W. presented M. who was instituted and inducted, all which was pleaded, but the Manor being settled in Remainder in Fee to H. 8. Queen Eliz. as Heir to him, presented upon his Avoidance; But adjudged against her, because there is not a bare Usurpation pleaded against the Queen, but also an Estate.

state, viz. a Lease for Years in the said Advowson derived from Q. Mary, and that the Avoidance, whereupon the Action is brought falleth within the said Term, so as the Queen, who is Plaintiff, is encountered with the Lease of her Ancestor, against which she cannot make Title to present without special Matter; Wherefore Judgment was given against the Queen. Le. 44. pl. 58. Mich. 28 & 29 Eliz. The Queen v. Middleton.

10. A *Minor*, to which an Advowson is appendant, is extended on a Statute Merchant. Per Cur. if it become void during the Conussee's Estate the Conussee may present. Owen. 49. Mich. 32 & 33 Eliz. Arundel v. The Bishop of Gloucester.

11. If a *Man*, seized of an Advowson, takes a Wife, and dies, the Heir shall have two Presentments, and the Wife the third; yea, tho' the Husband in his Life-Time had granted away the third Turn. Watf. Comp. Inc. 8vo. 122. cap. 9. cites 2 And. 173. Williams v. the Bishop of Lincoln and Bailiffs of Bedford & D. 35. b. 28. H. 8. -

12. If a *Villain* purchases an Advowson his Lord shall present; Because the Lord upon such Purchase of the Villein may claim the Inheritance of the Advowson, and upon such Claim the Interest thereof shall be vested in him, and then the Lord in his own Right shall present to an Avoidance. Watf. Comp. Inc. 8vo. 179. cap. 11. cites Parson's Law, cap. 10. fol. 75.

(F. a. 3) Who shall present in respect of Estate Mortgagor or Mortgagee.

S. P. admitted by Lord Chancellor King, and by the Council of both Sides, 2 Wms's Rep 474. Hill 1726. cited the Case of Wood and

1. **B.** Mortgaged to A. the Manor of C. to which an Advowson is appendant A. brings Bill to Foreclose. The Church voids. Mortgagor (B) moved for Injunction to stay Proceedings in a Quare Impedit brought by A. Per Cur. Tho' B. has No Bill, yet being ready, and offering to pay the Principal, Interest and Costs, if A. will not accept his Money, Interest shall cease, and an Injunction shall be granted as to the Quare Impedit; For A. can make no Profit by presenting, nor Account for any Value in respect thereof to sink his Debt, and A. therefore in that Case, until a Foreclosure, is but in Nature of a Trustee for B. 2 Vern. R. 401. Mich. 1700. Amhurst v. Dawling.

Benchman v. Sir Tho. Stanley——and Serjeant Selby's Case——9 Mod. 2. S. P. admitted Arg Pasch. 1722. in the Case of Hungerford v. Clay.——But where a Mortgage was of an Advowson only without more, which the Mortgagor was possessed for a Term of 99 Years, and in the Mortgage was a Covenant, that on every Avoidance the Mortgagee should present it was insisted that this differed from a Mortgage of an Advowson appendant, tho' even in that Case such Covenant would be good; and the Court seemed to incline thereto, tho' as to that it gave no Opinion, there being another Point on which it decreed a Dismissal. 2 Wms's Rep 404. Hill. 1726. Gardiner v. Griffith.——Upon the Plaintiff's Petition Lord Sommers ordered the Defendant to revoke his Presentation, and to present such Parson as the Mortgagor, or his Vendee (For he had contracted to sell) should appoint. Ch. Prec. 71. Jory v. Cox.

It was ordered that Mortgagee permit Mortgagor to bring Quare Impedit in Mortgagee's Name. 3 Lev. 115. Stanton v. Barker cited in Walker and Hammerfly's Case.——2 Vern. 450. S. P. though the Mortgagee was in Possession Attorney-General v. Hesketh & al.

Assignee of the King's Title by reason of Simony in the Mortgagor brought a Quare Impedit, and then a Bill in Chancery that the Mortgage may not be set up nor given in Evidence against him at Law and Lord Wright decreed the same. Ch. Prec. 214. Attorney General for Hindley v. Sudall, Heskith & al.

2. A Mortgagee of an Advowson held for Years, without any other Thing joined with it in the Mortgage, by virtue of an Agreement expressed in the Mortgage Deed for that Purpose presented a Clerk on an Avoidance; The Mortgagor brought a Bill in Chancery seven Months after the Institution to compel the Clerk to resign; But Lord C. King dismissed the Bill, declaring, That as a Quare Impedit was confined to six Months after the last Incumbent's Death, so ought a Bill

to be limited to the same Time; But had a Quare Impedit been brought within the 6 Months, and the Bill been preferred after the 6 Months, the Court might, on a proper Case, give Directions in Aid of the Quare Impedit, that the Mortgage should not given in Evidence. 2 Wms's Rep. 404. Hill 726. Gardiner v. Griffith.

3. It seems, That if one, who is seised in Fee of an Advowson, mortgages the same for a Sum of Money, and the Money not being paid, the Grant becomes Absolute, and then the Church voids; if during the Avoidance the Money being paid, and the Advowson reconvey'd, the Mortgagor gets the Clerk instituted to the void Church, the Mortgagee is without all Remedy, tho' the void Turn was in him, and could not pass by his Reconveyance of the Advowson. Wats. Comp. Inc. 8vo. 437. cap. 22.

(G.a) Presentment to the Church. By Coparceners, Tenants in Common or Jointenants. Who shall present of Common Right.

1. **O**F Common Right, if they cant agree the Eldest shall present at the 1st Voidance, and the 2d Coparcener at the 2d. and so on every one in Order. 17 E. 3. 30. 37. b. Adjudged. * 21. E. 3. 37. b. 38. 9. 13. E. 1. B. Rot. 3. 12. D. 7. Kell. 1. D. 35. D. 8. 55. 5. Co. Litt. 116. (f) 186. b. (i) S. P. 3 Rep. 22. b. Arg. in Walker's Case: But says that this is not in respect of her Person only, but as it is annexed to her Estate; For as it is agreed 5 H. 5. 10. her Baron, who is Tenant by the Curtesy shall have it. — * Br. Presentation, pl. 19. cites S. C. — S. P. Br. Presentation, pl. 53. cites F. N. B. 34 — S. P. ibid. pl. 59. cites Doct. & Stud. lib. 2. cap. 20 — S. P. Br. Quare Impedit. pl. 12.

2. Also this Privilege given to the Eldest shall go to her * Issue and Quere as to the Assignee. Co. Litt. 166. b. (f) 186. b. (i) before any

Presentation by the Eldest. Hill. 18. H. 7. Kell. 49 — * See S. P. admitted Br. Presentation, pl. 35. cites 38. H. 6. 9. — There is a Diversity between the Case of a Partition by Deed by Act of the Party, For there the Privilege of Election of the Eldest Daughter shall not descend to her Issue, and Where the Law gives the Eldest any Privilege without her Act, there, that Privilege shall descend. Co. Litt. 166. b. — † Br. Presentation, pl. 27. cites 24 E. 3. 52. & Monstrans de Faits. pl. 65. cites S. C.

3. So Tenant by the Curtesy of the Eldest Sister shall have the same Privilege. Co. Litt. 186. b. (f) 166. b. (i) See pl. 1. in the Notes. Br. Quare

Impedit. pl. 62. S. P. cites 5. H. 5. 10.

4. If three Jointenants are of an Advowson, and the one presents, the Ordinary is not bound to receive him; but if he does, the other has no Remedy; For two cannot have Quare Impedit against the third; Contra of Coparceners. Br. Quare Impedit. pl. 128. cites 6. E. 4. 10.

5. A Fine was levied of a Minor, unto which an Advowson was ap- Br. Fines pl. 24 cites 45 pendant, wherein a third Part was rendered back to A. for Life with divers Remainders over, and so of the other two Parts, with the Advowson of every 3d Part as aforesaid; If they cannot agree to present, a Lapse shall incur; They are all Tenants in common, and being first named, or last named, is of no Privilege or Prejudice; For being by one Deed it shall pass Uno Flatu. Arg. Godb. 128. cites 45. E. 3. E. 3. 12.

6. A Grant was made of the next Presentation to Sir Godfrey Foliamb, And pl. 2. and to four others, & eorum cuilibet conjunctim & divisim, Hæredibus, S. C. adjudged accord- Executoribus & Assignatis suis, and afterwards the Church became ingly—4 Le. void, and Sir Godfrey presented one of the other four Grantees; and ad- 119. pl. 240. judged, That the Presentation by one alone was good. Mod. 4. Trin. 31. S. C. ad- H. 8. Sir Godfrey Foliamb's Case. judged accordingly

by the Name of Sir William Hollis's Case— Bendl 24. pl. 40. S. C. but mentions no Judgment — See (M. a.) pl. 2. S. C. — In Case of Berry v. Perry 3 Buls. a 66. Coke Ch. J. Arg. says it was resolved, that this Grant was not good, because an Interest cannot be divided, and says that with this agrees 14 Eliz. D. 304 pl. 54.

7. Two Sisters Coparceners of an Advowson, married; the younger Sister died, and her Husband was Tenant by the Curtesy. The Church voided; the Clerk of the Husband of the eldest Sister was received; And afterwards, the Church became void again, and the said Husband of the youngest Sister presented, but being disturbed, brought a Quare Impedit, as Tenant by the Curtesy in *Torno secundo*, and had Judgment. Moor. 224. pl. 304. Pasch. 28. Eliz. Beverley v. Archbishop of Canterbury.

8. The next Presentation was granted to 2 and before the next Avoidance one gave a Release to the other; then the Incumbent died, and one of them presented alone, and being disturbed, brought a Quare Impedit, and had Judgment; It was assigned for Error, because one of the Grantees had brought this Quare Impedit in his own Name alone; But adjudged maintainable, because the Release was made before the Church was void, and this Judgment was affirmed in Error. Moor 467. pl. 664. Trin. 9 Eliz. Rot. 1038. Lewes v. Bennet.

(H a.) Presentment to the Church. By Coparceners by Composition. How the Composition being.

1. **I**F the Composition be against Common Right it shall not bind without Deed. 17. E. 3. 38. b. Adjudged.

2. As after the Eldest has presented if the Composition be that the Eldest shall present again and then the 2d, and so the others in Turn, This shall not bind without Deed being against Common Right: For de Jure the 2d is to present. 17. E. 3. 38. b. Adjudged.

S. P. And if the Defendant will demur for not shewing of the Composition, and this is adjudged against him, this is peremptory, and the Plaintiff shall recover; For the Deed of Composition belongs to A. B. and not to the Plaintiff, who has only a Presentation, as held there by Thorp Justice, and the best Opinion. Br. Peremptory, pl. 25. cites S. C.

* In Brook it is [Defendant]

3. In *Quare Impedit*; the Plaintiff makes Title, That Composition was had between the Defendant and A. B. to present by Turn, and the Defendant presented, and A. B. granted to us, our Heirs, and Assigns, the next Presentation by the Deed, which he shewed, and so it belonged to him to present, the other prayed that the * [Plaintiff] shall shew the Composition; and because he does not claim but one Presentation, and so the [Deed of] Composition belongs to the Grantor, and not to the Plaintiff, therefore the Opinion was, That he shall not be compelled to shew it, by which the Defendant passed over, and pleaded a Release of A. B. Br. Monstrans, pl. 72. cites 39 E. 3. 37.

And Holt Ch. J. said, That a Composition may be either by Record, by Deed, or by Parcel. If either Parties in Blood (as Coparceners) or Strangers in Blood (as Tenants in Common, or Jointenants) agree by Record to present by Turns, and one presents, the

4. Error in *Quare Impedit*; Plaintiff counts that A & B. seised as Jointenants of the Advowson in Gross, by Indenture agreed to hold as Tenants in Common, and that they and their respective Heirs should present by Turns, and shews several Presentations alternately, and that A. died, and his Moiety descended to C. and made Title by grant of the next Presentation by C. to D. his Executors, Administrators, and Assigns, in whose Life the Church became void, and that D. made M. Executor, and died, and it belonged to him as Executor to present &c. The Bishop claimed Title by Lapse; The Plaintiff replied, That D. his Testator presented one Symms within six Months, and the Bishop refused him; Defendant rejoined, that he gave him 3 Days to prepare for Examination, and he never came; and traversed, that he refused Symms at the Presentation of the Testator; and upon Issue taken upon this Traverse, Verdict and Judgment was for the Plaintiff; and now it was insisted, that Plaintiff had made no Title, because the Agreement to present by Turns did not operate as a Partition, and sever the Right, but merely as a Composition.

tion or Agreement, which being broken, the Plaintiff has a proper Remedy by Action; But adjudged, That it severed the Right of Presentation. 1 Salk. 43. Mich. 11 W. 3. B. R. The Bishop of Salisbury v. Phillips.

Impedit; and this, whether the Presentation be by one privy to the Agreement, or by a Stranger. — 2dly, If either Privies in Blood (as Parceners) or Strangers (as Tenants in Common or Jointenants) agree by Deed to present by Turns the Composition is good, and the Plaintiff need not in Quare Impedit mention the Composition, it being once executed; And this shews that the Inheritance is severed, and that a separate Interest is vested in each of them to present by Turns. 3dly, by Parol, for so a Composition may be between Parceners; But between Strangers in Blood Composition cannot be without Deed, 1 Salk. 43. in the Case of the Bishop of Salisbury v. Phillips. — Carth. 505. S. C. and there held That by the Agreement to present by Turns, being executed on both Sides, there was a Partition of the Inheritance of the Advowson — So if 3 Tenants in Common agree to present by Turn, and every one has once so presented, it is not necessary in Quare Impedit, for any of them to shew the Composition, because it has been executed once; Otherwise, if not executed, as was held by Shelly, Fitzherbert, and many of the Serjeants, Dy. 29. pl. 194. Hill. 28 H. 8. — Wats. Comp. Inc. Svo. 117. cap. 8. cites S. C.

5. 7 Ann. cap. 18. Enacts that if Coparceners or Jointenants, or Tenants in Common be seised of any Estate of Inheritance in the Advowson of any Church or Vicarage, or other Ecclesiastical Promotion, and Partition is or shall be made between them to present by Turns, that thereupon every one shall be taken and adjudged to be seised of his or her separate Part of the Advowson to present in his or her Turn; As if there be two, and they make such Partition, each shall be said to be seised, the one of the one Moiety to present in the first Turn, the other of the other Moiety to present in the second Turn; in like Manner if there be three, four, or more, every one shall be said to be seised of his or her Part, and to present in his or her Turn. This Statute does not extend where the Plaintiff has but one Turn; for then tho' a Stranger had usurp'd in their Turn they should present to the next Avoidance in Prejudice to the others Right; therefore the Statute intends such Patrons only as have a continuing Right of Patronage, and to remedy the Cases not within the Stat. W. 2. Gibb. 253. in the Case of the Bishop of London and Lewen v. the Mercers Company.

(I. a) By Assignee.

See (K.c)

1. IF an Advowson be allotted in Chancery to the youngest Coparcener, she shall present and maintain Quare Impedit against the others till it be defeated. 17 E. 3. 38.

in pl. 10. And it is so said per Seton, That if the Advowson was allotted to the youngest &c. in Chancery, non est Dubium, that she shall not reign, by force of this Assignment, the first Presentment against the others by Quare Impedit.

2. If three Coparceners of a Manor, to which an Advowson is Appendant, make Composition to present by Turns, and the Eldest usurps in the Turns of the Middlemost and Youngest, and after usurps again in the Turn of the Middlemost, yet the youngest may present in her next Turn. 30 E. 3. 14. b.

3. So if Coparceners make Composition to present by Turn, and the one usurps in the Turn of the other, yet she upon whom the usurpation was * may present upon the Composition in her next Turn. For the Usurpation between Coparceners is an Usurpation but for the same Turn usurp'd, and does not put the other to her Writ of Right. F. N. 34. J. 22 E. 4. 9. See the Statute W. 2. cap. 5. awarded accordingly. — 4 Le. 222, 223. pl. 356 cites S. C.

4. If a Partition be made to one Coparcener, and an Advowson assigned to her in Chancery, the others being within Age, yet at their full Age they may present by Composition, or present by Turn as if no Partition had been made. 17 E. 3. 37. b. 30. b. Adjudged.

5 *Two Coparceners and a Stranger*, who pretended a Right to the Estate and an Advowson, agreed by *Indentures* mutually executed, that each of them should present by *Turns* until such Time as a Partition could be made. An Act of Parliament confirms the Indenture, and enacts, That every Agreement therein contained shall stand, and that all the rest of the Lands not particularly named, and otherwise disposed of by the said Indenture, should be held by these three in Common; The 1st in Turn grants the next Avoidance (the Church being full) to the Plaintiff, and Judgment for him; for 'twas agreed, that there should be a Presentation by Turns, and therefore for one Turn each had a Right to the whole Advowson by reason of the *Act of Parliament which confirm'd the Agreement*, and thereby an Interest is settled in each of them 'till Partition made; but this Agreement would have vested no Interest in either of them without an Act of Parliament to corroborate it; therefore there had been no Remedy upon it but by *Action of Covenant*. 2 Mod. 97. Trin. 28 Car. 2. *Crossman v. Churchill*.

(K. a) Presentment to the Church. By Coparceners or others, where it is to be made by Turn. What Presentment shall serve for a Turn.

See (C a) pl. 7. in the Notes there. — Several thought the Eldest should have the Presentment if the youngest would not join with her; for this shall be said the Commencement of her Turn, because she had not the Turn at the last Avoidance, that Presentment being made in the Name of both; Sed alii e contra. D. 55. pl. 5. Pasch. 34 & 35 H. 8. Archdeacon Carew's Case.

1. **I**F an Advowson descends to two Coparceners, the one being within Age and in Ward, and the Guardian marries with the Eldest, and after the Church voids, and the Guardian presents in the Name of both Sisters; This shall not serve for any Turn to the Eldest; but at the next Avoidance if they cannot agree in Presentment, the Eldest shall present alone, as if no Presentment had been made after the Descent to them. D. 35. B. 8. 55. 5. Nuxte.

* As for Incontinency or other such Cause. Cro. E. 68. Trin. 41 Eliz. C.B. S.C. by

2. If two have Title to present by Turn, and the one presents, and his Clerk admitted and instituted &c. and after is deprived for * Crime or Heresy, or any other Cause, yet he shall not present again; but this shall serve for a Turn, because the Church was full, 'till the Sentence Declaratory comes. Co. 5. Windfor 102.

Name of Windfor v. Archbishop of Canterbury, Loveday and Fletcher. — S.C. Mo 558. pl. 60. Pasch. 40 Eliz. — So if Grantee of the next Avoidance presents one who is admitted and instituted, but dies before Induction, the Grantee shall not present again; but if he dies before Institution, 'tis otherwise. Arg. Mo. 443. pl. 609 Hill. 38 Eliz. in the Case of Robins v. Gerrard. — S. P. Arg. Goldsb. 165. says, It was so adjudg'd in Colshill's Case — S. P. Per Gawdy, J. and agreed per Fenner, J. and Popham Ch. J. Goldsb. 165. in the Case of Robins v. Prince.

See (L a) pl. 6. — S. P. by Bromley J. Roll. R. 467. cites 5 Rep.

3. So if a Man, who has a Turn, presents one who is merely a Lay Person, and he is admitted and instituted &c. and it is declared by Sentence, that he is incapable, and therefore void ab Initio; yet because the Church was full 'till the Sentence Declaratory comes, tho' this shall relate to some Purposes, it shall be for a Turn. Co. 5. Windfor 102.

Cro. E. 687. Trin. 41 Eliz. C. B. S. C. — Mo. 558. Loveday v. Wind-

4. So if A. who has one Turn, presents B. who is admitted and instituted &c. and after he is deprived by Sentence; whereupon C. who has the 2d Turn, presents D. who is admitted and instituted &c. and after he is deprived, and the first Sentence of Deprivation of B. declared to be void, and he restored, and after D. dies, and then B. dies

dies, C. shall present in his Turn; for tho' D. was Parson for the Time to all Purposes during the first Deprivation, and B. was not Incumbent, yet when the 2d Sentence comes, B. was Incumbent again by Force of the first Presentment, Institution, and Induction, and needed not a new Institution &c. And so B. died Incumbent by Force of the first Presentment in the first Turn. Co. 5. *Windfor* 102. Adjudged.

for and Hitch; because the Sentence Declaratory for the Re-titution made a Nullity in the Deprivation presented.

of B. and so utterly defeats the Incumbency of D. as if he never had been presented.

5. But in the said Case, if D. had died Incumbent before the second Sentence, or if the first Sentence had not been revers'd; then this should serve for the Turn of C. who presented him. Co. 5. *Windfor* 102 b. Cro. E 686. — Mo 553. pl. 760.

6. If a Man presents B. who is admitted, instituted, and inducted, but he has not subscribed the Articles &c. according to the Statute of 13 El. by which the Admission, Institution, and Induction are void, it shall not serve for a Turn; because the Admission, Institution, and Induction, are merely void by the Statute. Co. 5. *Windfor* 102. b.

By his not reading the Articles he was never lawful Parson of the Church, by reason

of the Statute of 13 Eliz. D. 31. b. pl. 31. Mich. 23 & 24 Eliz. Anon. — Ibid. Marg. says, It was adjudg'd, that the Church is void, ipso facto, without Deprivation. cites Trin. 48 Eliz. B. R. Baker v. Brent. — Hob. 168 cites S. C. — S. C. cited, and S. P. held by Vaughan Ch. J. Vaugh. 133. Hill. 22 & 23 Car. 2. in the Case of *Shute v. Higden*. — 2 Jo 19. S. C. And there Vaughan Ch. J. took a Diversity between *not Reading* the Articles and *not Subscribing* them; for the Statute prohibits Admission before Subscription, and makes the Admission, Institution, and Induction void.

7. Where the one loses his Turn by Lapse, this shall stand for his Turn; and at the next Avoidance, the other shall have his Turn again; Quod nota. Br. Presentation. pl. 26. As in Quare Impedit by J. Prebendary of the Church of

L. of a Voidance of a Vicarage against the Bishop of E. and H. and counted that he had one Prebend as above, and H. had such another, and they are seized of these Prebends in the Church of L. to which the Vicarage is appendant to present by Turn; and that 7. the Plaintiff presented D. Vis Clerk &c. who was received, by whose Death &c. the Church voided, and the Bishop in Default of H. made Collation to one G. &c. and made Induction in Right of H. by whose Death the Vicarage is now void; so it belong'd to him to present, and the Defendant disturb'd him &c. and a good Count. Br. Presentation. pl. 26. cites 24 E. 3. 26.

8. A Man seized of a Manor with Advowson Appendant had Issue four Daughters and died, and they made Partition, and that each present by Turn in Degrees as their Age was, by which the Eldest commenced &c. and her Clerk was in, and after the Eldest died, her Heir within Age, and found by Office for the King, and he seized the Ward, and after the Church voided again, and the King presented in the Turn of the second Daughter; And per Catesby, the King presented in Right of the Heir, and therefore his Presentment in the Turn of the second Daughter does not put her to her Writ of Right of Advowson. But to this Brian and Choke were strongly Contra, and that this is Usurpation; For there is no Privy of the Partition in the King, and this Presentation is in Jure Regis Proprio as Lord, and never shall make Title to the Heir in Quare Impedit. Br. Quare Impedit, pl. 139. cites 22 E. 4. 8.

9. Where one Parson presents in the Turn of her Coparcener, this does not put her to her Writ of Right of Advowson as Usurpation done by a Stranger shall do, by reason of the Privy, so that she loses nothing by this Turn, and shall have her Turn again when it comes to her Turn again; Per Catesby and Brian. Br. Quare Impedit, pl. 132. cites 22 E. 4. 8. So of Grants of Coparceners Ibid. — Where several Patrons are, and one usurps upon the

other, that other shall not present to the next Avoidance, but must wait till his Turn comes round. Gibb. 253. Pasch. 4 Geo. 2. B. R. held so in the Case of the Bishop of London and Lewen v. the Mercer's Company.

10. In Quare Impedit; four Minors descended to four Daughters, and an Advowson was appendant to one Manor, and they made Partition of it

cept the Advowson, and so that each Daughter had a Manor, and nothing determined of the Advowson by Composition or otherwise, and after the Church voided, and the eldest Daughter presented, and at another Voidance the second Daughter presented, and at a third Avoidance the Stranger presented, and after the Incumbent died, and the fourth presented, and well, by the Opinion of the Court; For the Fourth shall not lose her Turn by the Usurpation of a Stranger suffered by the third Daughter. Br. Quare Impedit, pl. 118. cites 2 H. 7. 4.

11. If the King upon his Promotion of the Incumbent to a Bishoprick does not take Benefit of the first Avoidance, but suffers a Stranger to present, and the Presentee dies, he shall not have his Prerogative to present to the second Avoidance. Cro. E. 790. Mich. 42 & 43 Eliz. C. B. Bassett v. Gee.

Ow. 131.
Mich. 42 &
43 Eliz. C. B.
S. C.

12. A. and B. seised in Fee of every other Turn; A. presented; then B. presented in his Turn, and after Induction his Clerk is deprived, but no Notice is given. The Bishop collates. A. grants his Fee to J. S. The Collatee dies. It is now B's Turn. For A. before his Grant to J. S. might have removed the Collatee for want of Notice; but he dying Incumbent, A's Turn is served. But after A's Grant to J. S. neither A. nor J. S. could present, and the Collation was good against all but the very Patron, who, after the Grant, could not have Action, but he has destroyed it by his Grant, and so none can have it. Cro. E. 811. Hill. 43. Eliz. C. B. Leak v. the Bishop of Coventry and Babington.

13. Where the King has Title by Lapse and presents, and his Presentee is instituted, yet the King may revoke his Presentation and present another, his Turn not being served by Institution only before Induction. Watf. Comp. Inc. 197. cap. 12. cites 1 Le. 156. Trin. 32. Eliz. Wright v. the Bishop of Norwich.



(L. a) Presentment to the Church. *What Persons may be Presented.*

Br. Presentation, pl. 2.
cites S. C.—
Br. Abbe, pl. 22.
cites S. C.—
C.——Br. Incumbent, pl. 2. cites S. C.

AB Abbot may be presented to a Church; (for he was capable of an Appropriation by which he was perpetually Parson in parsonage, and had Curam Animarum.) 34 H. 6. 15.

Br. Presentation, pl. 2.
cites S. C.

2. A Master of a College is not presentable to a Parsonage. 34 H. 6. 15.

——Br. Abbe, pl. 22. cites S. C.——Br. Incumbent, pl. 2. cites S. C.——If a Corporation consists of Master and Confreres, and the Master and Confreres present the Master, it is void; For the Presenter and Presentee are one and the same Person. Br. Presentation, pl. 23. cites 14 H. 8. 2. per Fitz-James——And per Moore J. The Master or Head of the Corporation cannot be severed from the Corporation, but other of the Commonalty may; For the Master and Confreres, or the Dean and Chapter, may present one of the Confreres, or one of the Chapter; For he is not a perfect Body without the Head; But he is a perfect Body if the Master, or Head, and the greater Part of the Commonalty assent. Br. Presentation, pl. 23. cites 14 H. 8. 2.——Br. Quare Impedit, pl. 86. cites 14 H. 8. 2. 29.——Watf. Comp. Inc. 8vo. 205, 206. cap. 13. cites S. C.——Watf. Comp. Inc. 8vo. 392. cap. 20. cites S. C. and adds, Quare, whether the Institution and Induction in such Case be merely void, so that Lapse may run from the Time that the Church became first void? And says, he conceives it is not so, but the Dean and Chapter may well present one of their Chapter, or any Corporation, one of their Members, and cites 3 Bull. 43. Trin. 13. Jac. Harris v. Austin.——It has been held, that when the Masters and Brothers of an Hospital did present the Master, and the Master and Brothers did bring a Quare Impedit against the Master by a strange Name, that the Writ did well lie, and that they should recover, the Presentment being void. Watf. Comp. Inc. 8vo. 515. cap. 26. cites 12 H. 8. 12.

3. The same Law of a Dean and Chapter, (though by Corruption they were capable of an Appropriation, and a Vicar made to have Curam Animarum for them. Com. 497.) 34 D. 6. 15.

Br. Abbe, pl. 22. cites S.C.—Br. Incumbent, pl. 2 cites S.C. Astowhat Roll says, that the supposed Innocence of Spiritual Aliens, from the intended Inconveniences, might come to the

4. It seems, that an Alien, who is a Minister, may be presented to a Church, though an Alien cannot have Possessions of Franktenement here, because by Intendiment they will adhere to their Country and against us in Time of War, and transport the Treasure of the Realm out of the Realm, yet this is not intended of Spiritual Men; and this was the Reason that anciently it was usual for Aliens to have Spiritual Promotions here, and Priors Aliens had many Possessions here, and were Parsons appropriate.

Nation by other Aliens, if they were allowed to enjoy Estate here, was the Reason they were suffered to enjoy Ecclesiastical Benefices here, could not sure be the Reason, but rather the Pope's Usurpation, and a Submission to his pretended Authority in Church Matters, and his providing many Ecclesiastical Preferments here to Aliens, his Friends and Creatures, was the chief Reason Aliens enjoyed Benefices in England, tho' other Reasons probable might be fancied to distinguish it from the Case of Laymen who had a Freehold in their own Right; but the Practice I believe has always continued to allow Aliens to enjoy Ecclesiastical Benefices here. Watf. Comp. Inc. 8vo. 576. cap. 20

5. By the Statute of 13 R. 2 and 1 H. 5. Frenchmen, are disabled to have Benefices in England, and Frenchmen endemizen'd; But Quare, whether they continue of force at this Day.

They are said to be obsolete.

6. If a Layman be presented, instituted, and inducted, he is Parson de facto, and it is not a mere Nullity. Hobart's Reports 209.

See And 16 pl. 34 Patch. 12 Eliz. Be-

nefield v. Pickering.—Bendl. 195 S. C.—D. 292. b. pl. 1. Mich. 13 & 14 Eliz. S. C.—Watf. Comp. Inc. 8vo. 52. cap. 5. cites S. C.—S. P. per Popham Ch. J. Cro. E. 315. Hill. 36 Eliz. B. R. in Case of Pratt v. Stoeke.—At Common Law a mere Layman was incapable. By a Statute in Q. Elizabeth's Time, a Deacon was made capable; By the Statute 14 Car. 2. 4. none but a Priest is to; and this Statute is declarative of the Common Law, and the Benefice not *ipso facto* void, but that there must be a Deprivation; and it is not like the Case of a Woman presented, which is a perfect Nullity; but when a mere Laicus is in, the Church is full; per Scroggs Ch. J. 2 Show. 54. Patch. 31 Car. 2. B. R. in Case of Hill v. Boomer.

A Layman is capable of a *Prebend*, for non habet Curam Animarum. Cro. E. 79. Mich. 29 & 30 Eliz. B. R. Bland v. Madox.

A Doctor of the Civil Law was admitted, instituted and inducted to a Living, being only a Layman, and made a Lease for Years of the Rectory; and if it was good was the Question. The Lease was confirmed before 13 Eliz. by the Patron and Ordinary. Per Gawdy J. such Acts which he was not capable to do shall not bind the Successor, because upon the Matter he was never Incumbent, and cited 4 H. 7. . . and 28 H. 8. D. . . But Popham and Fenner J. contra. For in regard he was Parson de facto, and such an one whereof the Law takes Cognizance by his Induction, and the People cannot take Notice of any other, All Acts done by him during that time shall bind as well as if he had been Rightful Parson. For it would be mischievous if all the Acts by such Averments should be drawn in Question. And all agreed, that all *Spiritual Acts*, as Marriage, Administration of the Sacraments &c. by such a one during the time that he is Parson are good, and therefore a Lease made by such an one, and confirmed by the Patron and Ordinary, shall well bind the Incumbent Successor; and resolved to have adjudged it accordingly by Consent of Gawdy J. But for other Defects the judgment was stayed. Cro. E. 75. pl. 5. Mich. 42 & 43 Eliz. B. R. Costard v. Winder.—Mo. 606. pl. 836. S. C. and says, that the Successor became bound in an Obligation after the 14 Eliz. that the Lessee should enjoy the Term; after which Obligation the Successor was absent, more than 80 Days in a Year; And the Question was, if the Obligation was void by the Statute of 14 Eliz. and adjudged that it was not, because the Lease was good, and so was the Obligation made for enjoying the Lease which the Successor could not avoid. And note, they agreed, that the Parson being a Layman ought to have been deprived; For otherwise all his Acts will be good as lawful Patron till Deprivation.—And the Deprivation shall not have such Relation to make him no Parson ab Initio, though it be declaratory; For the Successor shall not have mesne Profits. D. 292. b. Marg. pl. 72. cites S. C.—Watf. Comp. Inc. 8vo 119. cap. 8. cites S. C.

Tho' a Layman, by being admitted and instituted to a Benefice, has a Freehold, yet he may be sued in the Spiritual Court and deprived for that Cause; but if he has wrong done him, he may, peradventure, try it by Assize. Cro. C. 65. Hills. 2 Car. C. B. in Sutton's Case.

7. If a Man utterly illiterate be presented, instituted, and inducted, this is not a mere Nullity, but he is Parson de facto.

8. If a Woman be presented, instituted, and inducted, it is a mere Nullity, because her Incapacity is apparent. Hobart 209.

S. P. per Scroggs 2 Show 54

Patch. 31 Car. 2. in Case of Hill v. Boomer

(M. a)

(M. a) What Persons may be presented *for a collateral Respect.*

1. IF a Grant of the next Avoidance be granted to three, and after the Church voids, and two of the three present, the third Grantee being a Clerk, this is a good Presentment, and the Bishop cannot refuse him, though all three were Jointenants thereof by the Grant, and only two of them joined in the Presentment; because the third Person cannot present himself. D. 13, 14 El. 304. 54.

Perhaps that one could not maintain

Quare Impedit; For the *Habendum* was *Eis & uni eorum Conjunctim & Divisim*, and so the *Severance* in the *Habendum* seems void in Law. D. 304. b. pl. 54. — Watf. Comp. Inc. 8vo. 402. cap. 20. cites S. C.

Presentment of the third by one alone was held good, the Grant being to the three *Et eorum cuilibet Conjunctim & Divisim*. Mo. 4. Trin. 31 H. 8. Sir Godfrey Foliamb's Case. — Watf. Comp. Inc. 8vo. 402. cap. 20. cites S. C. — And. 2. S. C. — 4 Le. 119. S. C. by the Name of Sir William Hollis's Case. — Bend. 24. S. C. by Name of *Hollis v. Roland*, where the Deed of Grant is recited Verbatim, and no *Habendum* in it. — Mo. 849. pl. 1154. Coke Ch. J. cited this Case out of Bendloe, and takes a *Difference between a Joint Interest and a Joint Authority*, and that one alone could not present, because it was a Joint Interest, but that had it been a Joint Authority it had been otherwise.

If three are seised of a *Manor with Advowson appendant*, whereof the one is a Priest, and they three present the Priest by a *strange Name*, who is admitted, instituted, and inducted, this is a good Presentation, and a good Seisin for them; and if the Priest dies, and the other two survive, this is good Title for them in another *Quare Impedit*; by the Justices. Br. Presentation, pl. 45. cites 21 E. 4. 66.

Watf.

3. He who presents himself by a *strange Name* where he is Patron, and takes, he shall be put out for Spoliation; For he may pray the Ordinary to * admit him, but not present himself. Br. Quare Impedit, pl. 18. P. but if the cites 35 H. 6. 59.

Ordinary

does admit him accordingly, this gains no Possession; For there is no Presentation, and a Man cannot plead Plenary of his own Presentment. Watf. Comp. Inc. 8vo. 204. cap. 13. cites 14 H. 8. 3.

And afterwards upon a Motion for a Consultation, because otherwise Stokes had no Remedy, the Court refused to grant it. Lat. 253. S. C. by Name of Stoke v. Styles — Noy. 91. S. C. by the Name of Stock v. Sicks.

4. Stokes the Father was Incumbent, and after his Death the Patron presented Stokes the Son, who was refused by the Bishop, because by the Canon Law *Filius non potest succedere Patri in eadem Ecclesia*, whereupon the Patron presented Sykes; then Stokes the Son obtained a Dispensation Non Obstante the Canon; but the Ordinary instituted Sykes, and caused him to be inducted. Thereupon Stokes the Son sued Sykes and the Ordinary in the Delegates; But by all the Justices a Prohibition was granted; and Jones J. said, that he had known it granted three Times, where both Persons claimed by one Patron. But he and Doderidge held, that the Canon abovementioned holds not in this Church; And Doderidge said, that so was the Opinion of a learned Civil Lawyer. Lat. 191. Stokes v. Sykes.

(N. a) To whom it shall be made.

Hutt. 24. in Case of 1300. ton v. Bishop of Rochester, it was held to be

1. AFTER Lapse incurred to the Metropolitan, and before Collation by him, if the Patron presents, he may present to the Ordinary of the Diocese without presenting to the Metropolitan. Contra. D. 41 El. B. R. per Popham.

clear,

clear, that though the six Months pass, yet if the Patron presents, the Bishop ought to admit, though it be after the Title devolved to the Metropolitan.——Watf. Comp. Inc. 3vo. 265. cap. 15 cites S. C.——Watf. Comp. Inc. 8vo. 199. cap. 12. cites S. C.

(O. a) *At what Time* [a Man] may present.

Fol. 349.

1. If a Man presents his Clerk to the Bishop, who dies before he is received, he may present another. 38 E. 3. 36. b.

2. If a Man presents his Clerk to the Bishop, yet he may present another before the Bishop has received his Clerk. 38 E. 3. 36. b.

And the Bishop shall receive him; For the Writ which was first presented to him. Per Finch. Br. Quare Impedit, pl. 67 cites S. C.——Br. Presentation, pl. 18. cites 18 E. 3. 26. but it should be (38.)

issues to the Bishop does not mention that the Bishop shall receive the same Person that was first presented to him. Per Finch. Br. Quare Impedit, pl. 67 cites S. C.——Br. Presentation, pl. 18. cites 18 E. 3. 26. but it should be (38.)

3. 3 E. 1. cap. 28. Enacts, that no Clerk of the King or other Justice shall receive the Presentment of any Church, whereof Plea is pending in the King's Court, without special Leave of the King, in pain to lose the Church and his Service.

4. Where a Man presents to the Bishop, and he will not receive him, he may present as many as he will till the Bishop will receive him. Br. Presentation, pl. 18. cites 18 E. 3. 36. Br. Quare Impedit, pl. 67. cites S. C.

5. If an Incumbent changes his Benefice for another, or resigns it, the Patron may present immediately; For these are Voidances in Law and in Fact. Br. Presentation, pl. 49. cites 2 H. 4. 5.

6. In Quare Impedit, the Defendant said, that the Incumbent was presented, living the other Incumbent, and so he is in by Spoliation &c. Br. Quare Impedit, pl. 13. cites 33 H. 6. 26. in a Nota.

7. When one having good Title to present, and an Incumbent by Usurpation is admitted, instituted, and inducted, and after that the Patron presents, and the Bishop refuses, and after the Patron recovers, and then he, which had this Presentation, exhibits it to the Bishop, this is now a good Presentation; and the Patron cannot revoke or give him a new Presentation; but if the Patron, before the Death of the Incumbent, makes Letters of Presentation, that is void; because he had no Title to present. Hutt. 67. Mich. 21 Jac. Rud v. the Bishop of Lincoln.

8. If the Patron presents his Clerk a Week before the 6 Months be ended, and the Ordinary refuses the Clerk for Inability, because he is unlearned, and then the 6 Months pass before he presents another after the 6 Months after the Death of the Incumbent; in such Case, the Bishop shall have the Collation of the Clerk, because it was the Folly of the Patron, that he did not present his Clerk before, so as the Ordinary might examine him; and that thereupon if he be found to be unable, that he might present another Clerk to the Ordinary within convenient Time, and for that Cause is the 6 Months given to the Patron, that he provide another Clerk in the mean Time; per Ld. Dyer. 3 Le. 46. Mich. 15 Eliz. in the Common Pleas.

9. Quare Impedit to the Vicarage of Huston in Suffex, by the King against the Bishop; the Case was such, the King had the Advowson of the Vicarage belonging to such a Manor, by reason of the Wardship of the which became void during the Minority of the Heir; the Heir sues Livery; the King presents thereto under the Great Seal; and afterwards (without mentioning this first Presentment) presents thereto another under the Seal of the Court of Wards; the second Presentee is admitted, instituted and inducted by the Bishop before any Notice of the first Presentment; The King brings a Quare Impedit against the first Presentee; and adjudged, that it lay not; for by Coke and Warburton, it was within the disposing of the Court of Wards, al-

though it were after Livery, because it was a Chattel vested. Cro. J. 247. Trin. 8 Jac. C.B. the King v.

See (M. b) (P. a) At what Time it may be. [*Before Deprivation.*]

1. If an Incumbent be deprivable, yet the Patron cannot present another to the Church before he is deprived; For the Church is not void before. Contra. 17 E. 3. 59. b.

Watf. Comp. Inc. Svo. 385. cap. 20. cites S. C. But otherwise it is where the Church is for some Fault or Defect in the Clerk declared by the Law to be actually void.

2. If the Visitor, by Command of the King, returns into Chancery good Matter of Deprivation of the Clerk of the King, yet the King cannot present another to the Church before that he is deprived. Contra. 17 E. 3. 59. b.

3. If an Incumbent be created a Bishop, the first Benefice is void immediately; But if he takes two Benefices incompatible, this is a Voidance in Law or Cause of Voidance, and not void in Fact. to make the Patron able to present till he be conven'd and deprived by Sentence; per Hill; And so see that the Voidance is not by his Act only as it is of Relinquation, or of the taking of a Bishoprick; Quære of those of the Spiritual Court. Br. Presentation, pl. 50. cites 11 H. 4. 36.

(Q. a) At what Time it may be; *where the Church is full.*

* S. C. Roll Rep. 191. 227. 2 Roll Rep. 6. Hill. 15 Ja. B. R. — Admission and Institution without more, is good Plenarty and Possession.

1. If J. S. presents, and his Clerk is Admitted and Instituted, J. D. cannot present his Clerk before Induction; for the Church was full against a common Person before; for by the Institution he has Curam Animarum. 38 E. 3. 4. My Reports. 13 Ja. B. between Hitching and Glover; and in the same Case H. 15 Ja. B. R. adjudged. D. 4 El. 217. 62. adjudged. 22 H. 6. 27. Co. 6. Boswell 49. b. 33 H. 6. 24 Co. 4. 76. b. Co. 7. 26. Co. 6. 41. Da. 82. b. 21 E. 4. 34. b. Com. Hare. 528.

Br. Plenarty, pl. 5. cites 22 H. 6. 27. — Br Quare Impedit, pl. 1. cites S. C. — S. P. Ibid. pl. 10. cites 33 H. 6. 24. — S. P. Ibid. pl. 83. cites 22 H. 6. 25. — S. P. Br. Prerogative, pl. 20. cites 38 E. 3. 8. 9 & 10. — S. P. Br. Presentation, pl. 17. cites 38 E. 3. 3. 4. — S. P. Br. Quare Impedit, pl. 65. cites S. C. — S. P. Watf. Comp. Inc. Svo. 504. cap. 26. cites Keilw. 88. Hill. 22. H. 7. — S. P. Watf. Comp. Inc. Svo. 50. cap. 4. And Ibid. 51 it is said, that by Admission and Institution the Church is full as to the Cure of Souls, and against himself and all other Persons, unless the King.

Against the King there is no Plenarty without Induction or Installation; quod nota. Br. Plenarty, pl. 5. cites 22 H. 6. 27. — Br. Quare Impedit, pl. 1. cites S. C. — S. P. Ibid. pl. 10. cites 33 H. 6. 24. — S. P. Ibid. pl. 65. cites 38 E. 3. 3. 8. 9. — S. P. Ibid. pl. 83. cites 22 H. 6. 25. — S. P. Br. Presentation, pl. 17. cites 38 E. 3. 3. 4. — S. P. Br. Prerogative, pl. 20. cites 38 E. 3. 8. 9 & 10. — S. P. Watf. Comp. Inc. Svo. 393. cap. 20. — S. P. Watf. Comp. Inc. Svo. 50. cap. 4. — S. P. And yet if the Patron present, and his Clerk is Admitted and Instituted, and forbears to be inducted 18 Months, the King shall not sue upon him for Lapse, the Institution stopping the Lapse from going to the inferior Ordinary.

2. But if a Common Person presents, and his Clerk is admitted and instituted before Induction, the King, if he has Right, may present, and his Clerk shall be instituted; for the Church is not full against the King before Induction. 38 E. 3. 4. 9. adjudged. My Reports. 13 Ja. B. between Hitching and Glover. And H. 15 Ja. B. R. in the same Case so adjudged. D. 4 El. 217. 62. 22 H. 6. 27. 33 H. 6. 24. Co. 7. 26. Co. 6. 49. b. Da. 82. b.

Comp.

Comp. Inc. 8vo. 196. cap. 12. cites Hob. 154. Colt v. Glover, and Goldsb. 164. Hill. 43 Eliz. per Popham, in Case of Robbins v. Prince.

In Quare Impedit it was agreed, That where a Bishop presents to the Prebend, and dies before Induction, by which the Temporalities come into the Hands of the King, that the King shall present to the Prebend; for there is no Plenarty against the King without Induction. Br. Plenarty, pl. 5. cites 11 H. 4. 7. — So where the Bishop makes Collation, and dies before Induction. And from hence it seems that Collation with Institution is good Plenarty against a common Person, as well as Presentation with Admission and Institution. Ibid.

3. But if the King has not any Right to the Church, the Church is full by Admission and Institution of the Clerk of a Common Person, without Induction against the King also, so that he cannot present. My Reports 13 Ja. B. between Hitching and Glover. And Hil. 15 Ja. B. R. in the same Case agreed.

S. C. and S. P. by Coke. Roll. Rep. 227. 228. and that so it is if he claims from a Common Person.

4. If a Man usurps upon the King, and his Clerk is Instituted and Inducted, tho' the Patronage be not out of the King, and the King may remove the Incumbent by a Quare Impedit, yet * till Removal the Church is full against the King; and so during this Time he cannot present any other to the Church; for by the usurpation the Presentment Hac Vice is out of the King. M. 13 Ja. B. R. between the King and Sacker agreed. Fitz. Na. 36. K. 1 D. 7. 19. Co. 6. 30. and 49. b.

* S. P. Or Resignation. Cro. J. 385. Mich. 13 Jac. B. R. S. C. by Name of the King v. Bishop of Norwich, Cole and Saker. —

Before Remotion by Quare Impedit, the Plenarty shall bind him Quoad the Possession; for Reason requires that the Church be served; and one being in by Presentment, and according to the Ceremonies of the Church cannot be put out without Action. Cro. J. 123. Trin. 4 Jac. B. R. The King v. Champion — Before a Presentation can be made to a Church, it must be actually void, and its being voidable only is not sufficient. Roll. Rep. 213. Per Coke, who cited 17 E. 3. Small's Case.

If a Prebend happen void, and the Bishop collates thereunto, and before Induction the Bishop dies, and the Temporalities come unto the King, and after he is inducted, and afterward the King giveth the same by his Letters Patents unto another Clerk who is Instituted and Inducted, the first Clerk shall have a Spoliation in the Spiritual Court against the Presentee of the King; because the King ought to have removed him by Quare Impedit, and not to have collated as he did. And there the Patronage doth come in by Debate. F. N. B. 36. K.

5. So, before Removal of the Clerk, the King cannot present the same Clerk who is in by Usurpation; for this cannot enure as a Surrender and new Presentment. M. 13 Ja. B. R. between the King and Sacker adjudged.

S. P. Roll. Rep. 235. Per Coke quod fuit concessum per totam

Curiam. S. C. by Name of The King v. Bishop of Norwich.

6. If a Man recovers in Quare Impedit against the Incumbent, the Incumbent is so removed by the Judgment, that the Recoverer may present to the Church without other Removal of the Incumbent, tho' the Incumbent continues Incumbent De Facto till Presentment by the Recoverer. M. 12 Ja. B. R. between * Whistler and Singleton. Resolved per Curiam. Trin. 13 Ja. B. R. between Austin and Dr. Harris per Curiam, without Writ to the Bishop. 32 E. 3. Quare Impedit 2. admitted in Case of the King.

Fol. 350. * S. C. Accordingly. Roll Rep. 62. And Coke said the first Incumbent continues In-

cumbent De Facto till the last Incumbent be instituted. — S. P. Watf. Comp. Inc. 8vo. 382. cap. 20.

7. But after such Recovery in a Quare Impedit a Stranger to such Recovery cannot present to the Church; for notwithstanding the Recovery, yet the Incumbent continues Incumbent De Facto as to Strangers. M. 13 Ja. B. R. between Fairbank and Durham.

If a Stranger to the Recovery (tho' his Title be best) should present o

the Church, his Presentation would be void, as being made to a Church that is full. Inc 8vo. 382. cap. 20. cites S. C.

Watf. Comp.

8. If A. and B. are Tenants in Common of an Advowson, and the Church voids, and a Stranger usurps, and his Clerk inducted, and A. and

Roll. Rep. 242. S. C.

Adjournatur. A. and B. bring Quare Impedit, in which B. is summon'd and sever'd, and after A. recovers before other Removal of the Incumbent, B. cannot present; for he is a Stranger to the Recovery. Dubitatur. B. 13 Ja. B. R. between Fairbank and Durham.

9. So in this Case B. cannot after the Recovery present the same Person who was Incumbent, and against whom the Judgment is given; for this Acceptance cannot make the Church void to B. Dubitatur. B. 13 Ja. B. R. between Fairbanke and Durham.

Roll. Rep. Rep. 242.
S. C. Adjournatur—
Watf. Comp Inc. Svo. 383. cap. 20. cites S. C.

And. 244. 10. The Bishop collated without good Title of Lapse or otherwise, and after the Patron dies after the six Months past, and the Executor brings Quare Impedit by Force of the Statute of 4 E. 3. and the Bishop and the Incumbent plead Plenarty by six Months, and adjudged no Plea upon Demurrer, because this Collation is not any Plenarty, being tortious. B. 32 El. B. Rot. 2065. between Smallwood and others Executors of Smallwood, against the Bishop of Coventry and Litchfield. Adjudged upon Demurrer; but another Writ brought before abated, because it was to the Impediment of the Testament.

this is not a Plenarty within the Statute of W. 2. For that must be Ex Presentatione, and not Ex Collatione; and the Plaintiff had Judgment.—Le. 205. pl. 284. S. C. but I do not observe S. P. there.—4 Le. 15. pl. 53. S. C. And it was held, That the Executors upon this tortious Collation might have Quare Impedit for the Disturbance, and that by Equity of the Statute 4 E. 3. 7. and that the Clerk should be removed at the Suit of the Executors.

Co Litt 344. 11. If the Bishop collates without good Title of Lapse, this does not put the Patron out of Possession, but he may present after, tho' the Clerk of the Bishop be Instituted and Inducted. Co. 6. Greene 29. b. and Boswell 50. Co. Litt. 344.

made for the Celebration of Divine Service till the Patron presents.—If the Bishop collates his Clerk either before he gives Notice of an Avoidance where Notice is requisite, or at any Time within the 6 Months limited to the Patron to fill his Church, the Patron may at any Time after present his Clerk; for tho' a wrongful Detainer makes such a Plenarty as shall bar the Lapse to the Metropolitan and King, yet it is no Bar to the true Patron; and if the Bishop admits the Patron's Clerk, the other is out Ipso Facto; or if the Bishop will not admit him, the Patron may as well then, as at any other Time before, have his Remedy at Law against the Bishop. Watf. Comp. Inc. 187. cap. 12. cites Hob. 302. Hill. 17. Jac. Gawdy v. the Bishop of Canterbury & al.—In such Case the Patron must actually present, and the Ordinary must refuse to admit his Clerk before the Patron can bring his Action; for tho' the Ordinary has collated, yet the true Patron may present to the same Ordinary, and he may institute &c. his Clerk, and then the two Clerks shall try who hath the better Title. Watf. Comp. Inc. Svo. 425. cap. 22. cites Pl. C. 500. Grendon's Case.—Watf. Comp. Inc. Svo. 425. cap. 22. cites S. C.

12. If Lapse be devolved to the Metropolitan, and after the Ordinary, who has pass'd his Time, collates his Clerk within the 6 Months of the Metropolitan, and his Clerk thereupon is Instituted and Inducted, It seems that this was a Plenarty against the Patron; for the Collation is lawful against all except the Metropolitan, and it is a Plenarty against him also. Summer Assises at Bath in the County of Somerset before the Lord Finch, upon a Trial between Sir Francis Pepham, and the Bishop of Bath and Wells and his Son; this was a Question, and so held by Lord Finch.

13. But a Collation by Lapse by a Bishop, and an Institution and Induction thereupon, will put another Bishop, who has the right Title to collate, out of Possession, and to a Quare Impedit; so that he cannot present before the Incumbent is removed. Co. 6. Greene 29. b. and Boswell 50. Co. Litt. 344.

14. If the King presents Jure Prærogativæ suæ Ratione Lapsus, as it is express'd in the Letters Patents, where the King has not any Title to present by Lapse or otherwise, and thereupon the Ordinary Admits, Institutes and Inducts the Clerk, yet this doth not put the true Patron

S. C. Cited by Hobart Ch. J. Hob. 302. in the Case of Gaw-

Patron to his Quare Impedit, but he may present ; for the Presentment was void, the King being deceived ; and then this is an Institution and Induction without any Presentment. Co. 6. Greene 29. b. adjudged.

dy v Arch-
bishop of
Canterbury
& al. and
says it is to
be well un-

derstood that it makes no binding Plenarty against the true Patron ; but that he may not only bring his Quare Impedit when he will, but also present upon him : Years after. — Watf Comp. Inc. 8vo. 188. cap. 12. cites S. C. and P. but adds that such Plenarty bars a Lapse to the Metropolitan. — S. P. Jenk. 244. pl. 8.

If the Queen Non habens Jus presentandi, and yet presents to the Advowson as in suo Pleno Jure, it is a void Presentment ; for the Queen was deceived in her Presentment, which made it merely void as to the Queen, who can do no Wrong. And the Usurpation is only in the Incumbent, who procured himself to be instituted ; and he is the Wrong-doer, and against him only the Quare Impedit is always brought Per Croke J. but the other Justices doubted of this Point. Cro. C. 562. Mich. 16 Car. B. R. in Case of Yates v. Sir John Dryden & al.

15. If the King presents, and therein mistakes his Title, as if he presents Ratione Lapsus where he has Title Pleno Jure, tho' the Clerk be Instituted and Inducted thereupon, yet this does not put the King to his Quare Impedit ; for his Presentment is void, and then an Institution and Induction without a Presentment is only as a Collation, and so the King not out of Possession, but may present before Removal of the Clerk. Co. 6. Greene 29. b. Resolved.

Fol. 351.
S. C. and
P. cited Het.
51. Mich 3
Car. C. B.
in Thomp-
son's Case.—
And also

Litt. Rep. 60. in S. C. and which is reported in the same Words. — S. P. Arg. Roll R. 236. Mich. 13. in Case of the King v. the Bishop of Norwich.

16. If the King presents, and before Institution or Induction, the King repeals it, and therof gives Notice to the Ordinary, who after, notwithstanding, institutes and inducts him, yet the King may present another ; For the Church is not full, in as much as there is not any Presentment. D. 12. El. 292. 70. will prove this, in as much as a Confirmation to such Incumbent made by the King is void. Co. 6. Greene. 29. b. Resolved.

Co. Litt.
344. b. S. P.

17. So would it be in this Case, though the Ordinary instituted, and inducts the Clerk after Repeal, and before Notice thereof to him given ; For the Notice makes nothing to the Essence of the Repeal, but only to charge the Ordinary as a Disturber, if he proceeds after Notice. D. 12. El. 292. 70. will prove this in as much as a Confirmation to such Incumbent is void. 25. E. 3. 47. accordingly. Vide Co. 6. Greene 29. b.

18. If the King presents A. and, upon Refusal of him, brings Quare Impedit, and pending this B. procures a Presentment from the King of himself in Deceit of the King, and thereupon the Ordinary institutes, and inducts B. yet this does not put the King out of Possession ; But he may present before Removal of B. by Quare Impedit, in as much as the Presentment was void, and so an Institution and Induction, without any Presentment. Co. 6. Greene 29. b.

D. 339. b. pl.
47. Hill. 47.
Eliz. S. P.
adjudged.
The Vicar
of Yatton's
Case. —
The Queen
having Title
to the Ad-

vowson of M. presented one W. The Presentee being disturbed procured Quare Impedit &c. After which one S. obtained a second Presentation to the said Church ; notwithstanding which W. procured the Bishop to admit and institute him, and a Mandatum to have him inducted, and after Judgment was given for the Queen, W. was inducted, and Writ awarded after this to the Bishop, and the Opinion of the Justices was in this Case, that the first Presentation was repealed, and become void And. 38. Mich. 25 & 16 Eliz. Anon.

19. If a Man presents in Time of War, and the Presentee is instituted and inducted in Time of Peace, yet this shall not put the Patron to his Quare Impedit, but that he may present ; For this is but an Institution and Induction without any Presentment. Co. 6. Greene 30. Vide 6. E. 3.

Watf Comp.
Inc. 8vo.
392. cap. 20.
cites S. C. &
2 Rep. 93
Bingham's
Case — S. P.

And though the Presentment be in Time of War, and the Clerk is admitted thereupon in Time of Peace, yet the Law gives regard to the Original Act, that is to say, to the Presentment, and all that

follows thereupon shall be avoided, as being construed to be in Time of War, and shall not put the rightful Patron out of Possession. Watf. Comp. Inc. 8vo. 210. cap. 13. cites 6. E. 3. 41. 6 Rep. 30 Green's Case, 2 Rep. 93. Bingham's Case, & 1 Inst. 249. b.

Watf. Comp.
Inc. 8vo. 383.
cap. 20. cites
S. C.

20. If a Stranger, without Title presents by Tort to my Church (being void) by Simony, and 6 Months pass, yet I may after present; For the Statute has made the Presentment Institution, and Induction void, and so he is not Incumbent, nor the Church full. Co. Litt. 120.

* See pl. 11.

21. If a Lapse devolves to the King, and after the inferior Ordinary collates for the Lapse, and his Clerk is instituted and inducted, it seems that this does not make any Plenarty against the King to put him to his Quare Impedit, but that he may present and oust the Clerk of the Ordinary; For when Lapse is incurred to the King, this cannot be taken away by the Ordinary, and then when the * Ordinary collates without good Title, this does not make any Plenarty against him, who has the Right as the King has to present; For Lapse incurred to the King is not like to a Lapse incurred to a Metropolitan.

Hob. 168.
Pasch. 14
Jac. Winch-
comb v. the
Bishop of
Winton &
Pulleston.—

22. If a Man be presented instituted and inducted to a Church by Simony, tho' it be void as to the King and the Parishioners, yet it is not void to an Usurper; For a Man without Right shall not present thereto. Hobart's Reports, 227. Winchcomb's Case.

Watf. Comp. Inc. 8vo. 383. cap. cites S. C.

Br Quare
Impedit. pl.
70. cites S. C.

23. Where an Advowson is aliened in Mortmain, the immediate Lord may present within the Year, tho' the Church be full by 6 Months before his Quare Impedit brought, so that he brings it within the Year; Quod nota; Br. Mortmaine, pl. 13. cites 21 E. 3. 27.

By the Insti-
tution a Man
is Parson
without taking any Profits.
Per Ascue. Br. Quare Impedit. pl. 83. cites 22. H. 6. 25 — S. P. Br. Dean
and Chapter pl. 9. cites 22 H. 27.

24. A Man may be Parson without Induction. Per Newton Br. Quare Impedit. pl. 83. cites 22 H. 6. 25.

S. P. Comp.
Inc. 8vo. 186,
187. cap. 12.
cites S. C. &
Hob. 318.
Sir William
Elvis v. the
Archbishop
of York and
others.

25. If the Incumbent resigns, and the Usurper presents within 6 Months, and is in for 6 Months, no Notice being given of the Resignation, yet that shall bind him, and he shall be put to his Right of Advowson; Otherwise if the Ordinary had collated; Because the Induction is notorious to the Country, and the Patron ought to take notice of it at his Peril, to prevent the Usurpation by an Stranger. Noy. 65. Pasch. 39. Eliz. Servien v. Bishop of Lincoln.

26. Admission, Institution, and Induction without Presentment, is merely void, said per Williams J. to have been so adjudged in the Case of Green v. Baker. Cro. J. 252. Mich. 8 Jac. B. R. Case of Hunston v. Cocker.

27. Admission, Institution, and Induction of one who is mere Laicus is not void, but voidable; and till deprived the Plenarty remains. Per Holt Ch. J. Cumb. 202. Pasch. 5 W. & M. B. R. Dr. Harcourt's Case — Poph. 37. in an Anon. Case.

28. In all Cases when the Church is not otherwise filled, than by Institution and upon a void Presentment, or by wrongful Collation (except the Collation be made upon him that hath Right to collate) tho' the Clerk, by whom the Church is filled, has remained as Incumbent for some Years, yet if after the Patron presents his Clerk to the Bishop his Presentment is not void, but the Bishop may and ought to institute him thereupon, and the Institution shall be good to the Ousting of the other Incumbent, and if the Bishop refuse, the Patron may by Suit recover his Presentment. Watf. Comp. Inc. 8vo. 384. cap. 20. cites 6 Rep. 22. Green's Case — and 6 Rep. 50. Boswell's Case — & Co. Litt. 344.

29. If a Church be once duly filled of a Clerk, tho' the Clerk be after deprivable, yet it till such Time as he is actually deprived, the Patron may not present. Warf. Comp. Inc. 8vo, 384. cap. 20.

(Q. a. 2) *Plenary.* By whom to be pleaded, and in what Cases it is a good Plea.

1. **A**S well the Incumbent as the Patron may plead Plenary by 6 Months the Day of the Writ purchased. Br. Plenary pl. 14 cites Fitzh. Quare Impedit. 32. 47, 48, 49 & 189.

None shall plead Plenary in Quare Impedit but the

Patron, or he who is presented by Lapfe. Per Belknap, But per Parry at Common Law the Incumbent might have pleaded that he was in of the Presentment of the Plaintiff himself, But not of the Presentment of a Stranger, Quod Belknap concessit. Br. Plenary, pl. 12. cites Fitzh. Incumbent. pl. 4 2 R. 2. — * S. P. That Plenary by 6 Months of the Presentment of a Stranger is not Plea for the Incumbent to plead. per tot. Cur. For it is not to the Writ; For he does not give a better Writ against any Person certain; Nor it is not to the Action; For he does not make to himself any Title to the Patronage. Br. Plenary, pl. 9. cites 16 E. 4. 11. — S. P. Nor for any other but for him against whom the Writ of Right of Advowson lies, which is against none but the Patron. per tot. Cur. Br. Quare Impedit. pl. 134. cites S. C. — S. P. Br. Plenary, pl. 6. cites 38 H. 6. 20. — If the Clerk of a Stranger be incumbent of a Church by the Space of 6 Months, by Admission and Institution only, upon his Presentation, this makes a Plenary without Induction. Hill. 22 H. 7. Kelw. 88. — And the Patron may plead Plenary against all Common Persons. Warf. Comp. Inc. 8vo. 504. cap. 26.

2. If my Ancestor, Tenant in Tail presents, and after a Prior gets the same Advowson and appropriates it, and holds in proper Use by Licence a Year and a Day, and my Ancestor dies, I may have Assise of Darreign Presentment or Quare Impedit at any Time; for now the Advowson is always full, and this is a Presentation. Br. Presentation. pl. 8. cites 46 Aff. 4. Per Finch J.

But if a Man had presented to it, and the Church is full by this by 6 Months in the Time of the Ancestor,

then the Issue shall attend 'till the Church voids. Br. Presentation. pl. 8. cites 46 Aff. 4. Per Finch J.

3. In Quare Impedit, the Incumbent pleaded, that the Patron T. H. was seised of the Manor of Dale, to which the Church is Appendant, and the Church voided by the Death of one E. and the said T. H. presented him, by force of which he was admitted 6 Months before the Writ purchas'd, Judgment si Actio &c. Per tot. Cur. it is a good Plea for the Patron himself without shewing other Presentment in him before; But per Danby, yet this does not lie in the Mouth of the Incumbent. To which it was said, that the Plea was good by the Incumbent in this Case. Quare Causam, Because it seems that this Plea is for the Patron, and not for the Incumbent. Br. Plenary. pl. 4. cites 22 H. 6. 25.

The Defendant had been Parson for 3 Years, and pleaded Plenary generally by 6 Months of the Presentation of one A. a Stranger to the Writ; and the

Court held the Plea naught, because the Defendant shewed no Title in A. Brownl. 162 Lister. — Noy 30. S. C. by Name of Lister v. Cramecl. But had he pleaded Presentment of the Plaintiff himself, or Collation by Lapfe to the Ordinary, there, he need not make any Title. — Warf. Comp. Inc. 8vo. 516. cites S. C.

Cranwell v.

4. Parson Imparsonce cannot plead Plenary against a Stranger Patron; for the Pleading is given by the Statute of Westminster, cap. 5. that the Church is full by 6 Months, before the Writ purchas'd, of such a one by Presentation of such a one; which Parson Imparsonce cannot plead, for he is not in of any Presentation. Br. Plenary. pl. 7. cites 38 H. 6. 20. 39 H. 6. 21. Per Priort.

S. P. Br. Plenary. pl. 6. cites 38 H. 6. 20. That Plenary by Parson Imparsonce is no Plea —

S. P. Br. Presentation. pl. 36. cites 39 H. 6. 20. — Br. Quare Impedit. pl. 14 cites S. C. — S. P. Fin. Law. 8vo. 197. — S. P. Warf. Comp. Inc. 8vo. 515. cap. 26. cites 22 H. 6. 14 38 H. 6. 20 and 16 E. 4. 11 and Pl. C. 501. Brendon's Case. — But Per Priort, in Quare Impedit against Parson Imparsonce, Plenary of himself by a Year and a Day before the Writ purchased, is a good Plea, if it was lawfully appropriated. Br. Plenary. pl. 6. cites 38 H. 6. 20.

5. Note, *when there is no Patron, as where the Prior is a Priest, and is admitted to his own Benefice; or where my Advowson is alien'd in Mortmain, and appropriated to a Religious House, and the like; In those Cases I may have Quare Impedit, and there Plenarty by 6 Months is no Plea.* Br. Plenarty. pl. 10.. cites 14 H. 8.

Dr. Watson says, From this he supposes, that Plenarty upon a void Presentment is not pleadable; for then the Clerk is In-

6. *Plenarty by 6 Months upon an Institution, where the Institution is made upon a Presentment, is pleadable by all Persons against a Common Person; yet a Plenarty by mere Collation is not pleadable, but the Patron may bring his Writ and remove the Collatee at any Time.* Watf. Comp. Inc. 8vo. 505. cap. 26. cites Stat. West. 2. cap. 5. 3 Cro. 297. Mich. 32 & 33 Eliz. C. B. Smallwood, Cole and Sale v. the Bishop of Coventry and Marth. Jenk. Cent. 7. Case 7. 6 Rep. 49. Mich. 3 Jac. Boswell's Case.

cumbent as it were by Collation only; but when it is said, that Plenarty by Collation is not pleadable, it is to be limited as to such who have Right to present, but not to such who have no Right to collate; for Plenarty by Collation puts him, that has the Right to collate, to his Writ of Right, and is pleadable against him that hath the Right of Collating. Watf. Comp. Inc. 8vo. 505. cap. 26. cites 17 E. 3 64. b. Dean of Lincoln's Case — And 6 Rep. 49, 50 Mich. 3 Jac. in Boswell's Case, And 2 Inst. 357.

See (F a. 2) (R. a) At what Time it may be. [*Where there is Alienation, Disseisin &c.*]

S. P. Watf.
Comp. Inc.
8vo. 180.
cap. 11 —

* Fol. 352.

Where his

1. **I** If a Man be disseised of a Manor, to which an Advowson is appendant, and after the Church voids, the Disseisee may present thereto before Re-entry into the Manor, because his Entry is Congeable into any Part * of the Manor. 19 D. 6. 33. 10 E. 3. Quare Impedit. 146. Contra 39 E. 3. 21. b.

Where his Entry into the Manor is not taken away, he may present to the Advowson; Per Prior. Br. Quare Impedit pl. 11. cites 33 H. 6. 32. — S. P. by Pollard J. Kelw. 169 Mich. 6 H. 8. — But Brooke (ut supra) makes a Quare thereof, because, he says, it seems he cannot make Title without the Manor. — If a Man seised of Land and of Advowson appendant be disseised of the Land, and the Advowson voids, he shall not present to the Advowson, for he cannot make Title; for if he intitles himself as to the Advowson in Gross, then the Disseisor shall make a Lising, saying, that A. B. was seised of the Land to which &c. and infeoff'd him &c. Absque hoc, that it is in Gross &c. And if he claims as Appendant, the other shall say, that A. B. was seised of the Land to which &c. and infeoff'd him, Absque hoc, that the Disseisee was seised at the Time of the Avoidance; Per Danby; But per Littleton, a Man who is disseised of the Manor or Land, may seise Villein Regardant, and may enter into any Parcel, and therefore may present, but cannot have Common Appendant without an Entry. But per Danby Ch. J. Advowson is not Parcel of a Manor but appendant, and therefore a Diversity; for Disseisee may enter into any Parcel, but not into the Appendancies without the Manor or Land to which &c. And tho' the Advowson may be severed and made in Gross, it ought to be when the Owner is seised of the Land to which &c. but not by Presentment when he is out of Possession; Quod nota, good Reason; and Needham J. cum illo. Br. Presentation, pl. 30. cites 9 E. 4 38. — And where Tenant for Life aliens the Manor in Fee, he in Reversion cannot present to the Advowson before he has enter'd into the Manor; Per Needham J. But per Moyle the Seisin Tempore vacationis is not traversable; and so Littleton and Moyle against Danby and Needham &c. Ibid. — If an Advowson voids in the Time of a Disseisor, and the Disseisee re-enters before Presentation made, the Disseisee may present and shall have Quare Impedit. Br. Presentation. pl. 41. cites 2 H. 7. Per Townsend; quod non negatur.

Watf. Comp.
Inc. 8vo. 180.
cap. 11. cites
S. C. and 16
E. 3. Quare
Impedit. 146.
Contra 39 E. 3. 21.

2. So if Lessee for Life of a Manor, to which an Advowson is appendant, aliens the Manor; and after the Church voids, the Lessor may present before Entry into the Manor for the Forfeiture, because his Entry is congeable into any Part. 19 D. 6. 33. b.

3. So if Disseisor of a Manor, to which &c. aliens it, and after the Church voids, the Disseisee may present thereto before Entry into the Manor. 19 D. 6. 33. b.

4. If

4. If Lessee for Life of a Manor, to which an Advowson is Appendant, alien one Acre with the Advowson, by which the Advowson is appendant to the Acre, and after the Church voids, The Lessor may present before Entry into the Acre, because his Entry is congeable into any Part for the Forfeiture. Contra 18 E. 3. 44. by Issue. My Reports Contra.

Watf. Comp. Inc. Svo. 180. cap. 11. cites S.C.

5. If Baron be seised of a Manor, to which an Advowson is appendant, jointly with his Wife for Life, and alien one Acre with the Advowson, by which the Advowson is appendant to the Acre, and dies, and after the Church voids, The Feme cannot present before the Acre recontinued. 17 E. 3. 5. 19. Adjudged. Contra 22 E. 3. 7. Revers. 23 Aff. 8.

6. But if the Alienee alien the Acre to another, saving the Advowson, and after Baron dies, the Feme may present to the next Avoidance; because she shall not recover this with the Acre. 17 E. 3. 5. 19. b.

7. So if the Baron had alien'd the Advowson as in Gross, and after alien the Manor to another, and dies, the Feme may present to the Advowson, when it voids, before the Manor recontinued, because it is in Gross. Contra 17 E. 3. 19. b.

8. If a Feme be endow'd of the third Part of a Manor, and of the Advowson appendant, and after another Baron and Feme purchases the whole Manor; and after the Baron alien one Acre of the Manor with the Advowson appendant, and after second Presentment pass'd the Baron dies, and Tenant in Dower dies, The Feme may present to the third Presentment tho' she has not recontinued the Acre; because the Advowson by the Alienation could not pass as Appendant to the Acre, inasmuch as the Baron had only a Reversion therein at the Time. 23 Aff. 8. Adjudged. 22 E. 3. 7. Adjudged. Same Case.

9. If Tenant in Tail of a Manor, to which an Advowson is appendant, discontinues one Acre with the Advowson, and dies, and after the Church voids, The Issue may present before the Acre recontinued; because the Discontinuee never presented after the Continuance, this being the first Voidance after. 34 E. 1. Quare Impedit. 179.

S. P. Watf. Comp. Inc. Svo. 133. cap. 10. cites S. C. & Co. Litt. 333. b.

10. If Tenant for Life of an Advowson in Gross levies a Fine Come ceo &c. thereof, and after the Church voids by Death of the Incumbent, or otherwise, before any Claim made by him in Reversion, but after he in Reversion presents. In this Case he shall not have this Presentment, though the levying the Fine was a Forfeiture, yet till he in Reversion has made his Election to take Advantage of the Forfeiture, the Estate of the Tenant for Life is not destroy'd nor ended; and he might have taken Advantage of the Forfeiture by his Claim in the Life of the Incumbent; and inasmuch as he did not make his Claim before the Death of the Incumbent, the present Presentment was a Chattle vested in the Lessee, which cannot be divested after by the Presentment of him in Reversion. Trin. 13 Car. B. R. between Spring and Sir Julius Caesar. Per Curiam. Adjudged in Writ of Error upon a Judgment in Bank in a Quare Impedit. Intratur. Mich. 11 Car.

See Estate. (Q. b) pl. 2— Watf. Comp. Inc. Svo. 134. cap. 10. cites S. C.—Watf. Comp. Inc. Svo. 181. cap. 11. cites S. C.—Jo. 389. S. C.



(S. a) What shall be a good Presentment. How it may be.

S. P. it being only a Commendation of a fit Clerk to the Ordinary. Watf. Comp. Inc. 8vo. 390 cap. 20.

1. **A** Common Person may present to a Church by Parol. Co. Litt. 120.

2. If a Common Person presents to a Church by Writing, yet this is not any Deed, but only in Nature of a Letter to the Bishop. Co. Litt. 120.

See pl. 4. in the Notes.

3. The King may present to a Church by his Letters. 2 E. 1. Rot. Patentium Membrana. 5.

For the Presentation is of the Clerk,

4. The King may present by Parol without Presentment in Writing. 19 E. 3. Quare Impedit. 60. Agreed. Co. Litt. 120.

and the Direction is to the Bishop, and though it be by Writing it is no Deed, but only as a Letter to the Bishop, and this is the Reason that the King himself may present by Parol. Co. Litt. 120. a. — It is only a Commendation, or Declaration of the King's Will, which may be by Parol. Cro. J. 248. Trin. 8 Jac. B. R. pl. 7. the King v. . . . for the Vicarage of Hunston in Suffex. — S. P. Mo. 874. pl. 1221 in Case of the King v. Bishop of Lincoln and King.

See (Q) pl. 14, 15. and Prerogative (O. b) pl. 3, 4. &c.

5. If the King be deceived in his Title of Presentment, this is a void Presentment. Co. 6. Greene. 29. b. Adjudged. Dubitatur D. 16 El. 327. 6.

6. If the King grants a Presentment by his Letters Patents by these Words, (Damus [&] Concedimus) without any Words of Presentment, yet it seems that it shall amount to a Presentment, and a good Warrant to the Bishop to institute him &c. Dubitatur. 19 E. 3. Quare Impedit. 60.

And though a Corporation made

7. Presentation by Corporation ought to be by Writing. Br. Presentation, pl. 23. cites 14 H. 8. 2. per Broke.

their Presentation by a wrong Name of Incorporation, yet it was held good. Cro. J. 248. pl. 7. Coke said, it was so ruled in the Dean of Norwich's Case.

8. If a Man presents *Ad Rectorem*, it is as good as if he had presented *Ad Ecclesiam*. Cro. J. 248. pl. 7. Coke said, it had been so adjudged.

9. If the King do ratify the Possession of the Incumbent, Ita quod in nullo Gravetur, this is now as a New Presentment; per Coke Ch. J. 3 Bulf. 90. Mich. 13 Jac. in Case of the King v. Sakar.

(T. a) Revocation. Who may revoke his Presentation.

* Br. Quare Impedit, pl. 48. cites S. C. — But in the second Presentment the first must be recited, and the Pleasure of the

1. **T**HE King may revoke his Presentation. 14 E. 3. Quare Impedit. 5. 28 E. 1. Rot. Patentium. Memb. 24. 2 E. 2. Rot. Patentium, Part 1. B. 3. D. 18. El. 348. 12. Fitz. Ra. 34. (C) 271. (D) D. 12. El. 292. 70. he may before Institution. 25 E. 3. 47. Admitted and adjudged. * 7 H. 4. 32. D. 16. El. 327. 4. Alter Letters obtained for Admission, Institution and Induction, and before Execution thereof. 14 E. 3. Quare Impedit 5.

King to revoke it; otherwise it is a Deceit of the King and void. Arg. 3 Le. 242. cites D. 339. The Vicar of Yatton's Case — If the King, before Admission of the first Presentee presents another, without Fraud or Covin in the second Presentee, such Recital is not necessary: But if the first Pres-

entee

sentee be instituted, then such second Presentation is no Repeal of the former, without recital of the former Presentation, and the Admission and Institution thereupon; and also there ought to be an express Clause of Revocation of the first Presentation, and of the Admission and Institution thereupon mentioned in the second Letters Patents of Presentation. D. 339 Marg. pl. 47. says, *This Difference* was adjudged. Pasch. 9 Ja. in the Exchequer, between Calvert and Kitchen.——The King may vary in his Presentation without reciting the former, and it shall not be void by the Statute of 7 & 8 H. 8. 15. per Coke, Warburton, and Folter. Cro. J. 248 pl. 7. Trin. 8 Jac. C. B. in Case of the King v. . . .
 † See this Statute at Prerogative (Q. b. 2.) pl. 8.

2. If the Presentee of the King be instituted, the King cannot revoke it after before Induction. *Dubitatur*. 18 El. 348. 12. 25 E. 3. 47. Admitted as it seems; For it is certified, that it was received after the Letters of Repeal.

After Induction upon a Presentation by the King, he by Letters Patents revoked the Presentation; and per Thorp, the Presentation is destroyed

3. If the Presentee of the King dies after Institution and before Induction, this is a Revocation in Law, so that the King shall present again, because the King has not the Effect of the Presentation. D. 20. El. 360. 7. Admitted. And Co. 9. Holt 132 said, that it was so resolved there. *Dubitatur* D. 18. El. 348. 12.

by the Repeal, and if the Bishop does not oust the Clerk, the Temporalities shall be seized into the King's Hands for the Contempt, and because no other Title was made but the King's Presentation, which is defeated, a Writ was awarded to the Bishop. Br. Presentation, pl. 6. cites 44 E. 3. 35.

The King had Title to present by *Lapse*, and his Clerk is instituted, but not inducted, and died before Induction. The Question was, If the King shall present for the said Lapse, because the Church was not full against the King? The Justices were all clear of Opinion, that the King might repeal such Presentation before Induction; And as to the principal Matter, the Court seemed inclined that the King might present again. Le. 156. pl. 218. Trin. 32 Eliz. C. B. Wright v. the Bishop of Norwich. —S. P. D. 348. a. pl. 12. Hill. 18 Eliz. in *Wiston's Case*, and there it was held by Dyer and Mounson accordingly; but Manwood and Harper e contra; but all agreed, that the King's Presentation shall always be said to be Admissus, Institutus, & Inductus, which was confirmed by Precedents and the Books of * 22 and 33 H. 6. and 24 and 38 E. 3. —But D. 360. b. pl. 7. Mich. 19 & 20 Eliz. in the Case of *Gyles v. Coiffhill*, where a Church became void by taking a second Benefice, and Lapse to the Queen by the 21 H. 8. by Default of Patron, Bishop, and Metropolitan, the Queen presented B. who was admitted, instituted and inducted. Then B. died. The Queen presented G. The Patron brought Quare Impedit against G. and counted of the Avoidance and Lapse, and that the Queen presented G. who was admitted and instituted, but did not say (inducted) and then the Church being now void by B's Death, it belongs to him to present. The Question was, Is this Plea-ting was good? And by the greater Number of Justices it was held good enough, and Precedents shewn in the King's Case where Admissus & Institutus only had been allowed. And in this Case it cannot be intended otherwise than that the Queen's Presentation was effectually executed in all Respects, and so not revocable, and Writ for the Plaintiff was awarded to the Bishop. —Bendl. 312. pl. 297. S. C. accordingly, and cites several Precedents where (Inductus) was omitted, and held good. —
 * Br. Quare Impedit, pl. 1. cites 22 H. 6. 27.

4. If the Chancellor presents to a Benefice, supposing it to be under the Value, where in Truth it is above Value, and thereupon the Presentee is admitted and instituted, and before Induction the King, being apprized thereof, repeals the said Presentation, and presents one in his own Name, This is a good Repeal; because, as it seems, the King has a right Precedent, and the King is received also in the first Grant. 38 E. 3. 3. b. 9. Adjudged.

Watf. Comp. Inc. Svo. 394 cap. 20. cites S. C. And Dr Watson says, he conceives it to be understood, that the Liv-

ing is not recited in the Presentation to be under the Value, else according to the Lord Chancellor's Case in Hob. 214. the Presentation will be void, and if so, it can be no Question in the King's Case at what Time it may be revoked.——It remained good till it was avoided. Winch. 19. Parson and Morlee's Case.

5. By the Common Law of Scotland, a Lay Patron may vary after he has presented his Clerk, and present another. *Skene Regiam Majestatem* * 10. b. vers. 3. 31 E. 1. Quare Impedit 185. So by our Law, *Linwood* fol. 110. b. 38 E. 3. 36. b. 14 E. 3. 2. b. and that the Ordinary may admit which of the Clerks he please.

Where a common Per-
 * Fol. 354

6. But by the Law also of the said Realm, an Ecclesiastical Patron cannot vary from his Presentation, Quia Presentatio a Clerico patrono facta vni habet Electionis & eligens Indignum privatur ipso Jure. *Skene Regiam Majestatem*. 10. b. ver. 3. 31. E. 1. Quare Impedit 185. So by our Law a common Lay Patron cannot revoke his Presentation. D. 91. El. 34. 12.

son presents his Clerk, and he is admitted and inducted, he cannot change his Presentation unless he is induced and

present another; *contra* of the King; Note the Difference. Br. Quare Impedit, pl. 65 cites 38 E. 3. 2, 8. 9. — A Lay Patron may vary from his Presentation before * Induction, but a Spiritual Patron cannot, because he may well understand the Sufficiency of his Presentee at first; Per Doderidge. Nov. 91. in Case of Stock v. Sicks. — Cites 38 E. 3. 36. D. 222. Kellw. 154. N. B. 14 E. 4. 2. — Doderidge said, that the Civilians say, that a Lay Patron cannot revoke his Presentation; But he may *conultu de extante*; And so the Ordinary shall have Election to institute which of them he will; but that a Spiritual Person cannot vary at all. But he said, that by our Law without Question a Patron may revoke his Presentation. Lat. 191, 192 Mich. 3 Car. S. C. by Name of Stoke v. Sykes — Lat. 253. S. C. — * It seems misprinted for (Institution.)

7. Brooke makes a Quare in the Case of Nomination being in one, and the Presentation being in another, if the Nominator may *name one, and after another*, as well as the Patron may vary in Presentment; and says that diverse of the Justices held that he may. Br. Quare Impedit, pl. 133. cites 14 E. 4. 2.

(U. a) *What shall be said a Revocation.*

See S. C. Argued Lane 71 to 74. Trin. - Jac. in the Exchequer — And Ibid. 120 to 124. Hil. 8 Jac. S. C. argued and adjudged

1. **I**f the King presents to a Benefice, and dies before his Clerk is Admitted and Instituted, the Presentment is revoked in Law by his Death. Mich. 8 Ja. Scaccario, and Hil. 8 Ja. Scaccario, between *Calvert and Kitchen* adjudged. Per Curiam.

2. If the King presents to a Benefice, and after presents another without Revocation of the first, or Mention thereof, yet it is a Revocation in Law of the first. Mich. 8 Ja. Scaccario. H. 8 Ja. Scaccario, between *Calvert and Kitchen*, per Curiam. D. 12 El. 292. 70. 16 El. 327. 4.

3. But otherwise it is if such second Presentment be obtained by Fraud and Deceit of the King, pending a Quare Impedit by the King upon the first Grant, Notice being given to him of his first Grant. D. 17 El. 339. 47. Co. 6. Greene 29. b.

See (T. a) pl. 3. S. C. and the Notes here.

4. If the Presentee of the King dies after Institution, and before Induction; this is a Revocation in Law, because the King has not the Effect of the Presentation, and so shall present again. Dubitatur. D. 18 El. 348. 12. Co. 9. Holt 132. said to be resolved in the said Case of 18 El. D. 20. El. 360. 7. Admitted.

See (T. a) pl. 1. 2. If the King presents his Clerk who is Admitted and Instituted, yet he may revoke this Presentment, and present

5. If the King presents, and after before Institution revokes it, but before Notice thereof to the Ordinary, the Ordinary Institutes and Inducts him, it seems that this Presentment was well revoked in Law, and the Consequence thereof to the Ordinary is not material as to the Substance of the Revocation, but only to discharge him from being a Disturber. D. 12 El. 292. adjudged as it seems. But Oyer makes a Quare thereof. Dubitatur D. 16 El. 328. 6. Vide 25 E. 3. 47. it seems will prove it.

another; for there is no Plenarty against the King without Induction; for where Title falls to the King, and Admission and Institution is pass'd before, and no Induction, then the King may present. Br. Plenarty, pl. 13. cites 33 E. 3. 4. — *Contra* of a Common Person. Ibid.

S. C. Cited Watf. Comp. Inc 8vo. 268. cap. 20. For if his Executor

6. If a Man presents, and before Institution dies, yet it seems that this is not any Revocation in Law of the Presentment, because this is pass'd from him by the Presentment. 24 E. 3. 30. it seems will prove it.

presents another Clerk, this second Presentment is also good, and the Bishop is at his Liberty which Clerk to receive. Cites Le 205. Trin. 21 Eliz. Smallwood v. the Bishop of Litchfield &c. — S. P. Arg. Lane 74 cites Mark Ogle's Case.

7. The *Vicarage of Tutton &c. came to the Queen by Loss* of 2 Years. Afterwards the Bishop of the Diocese collated *L. to it*, and afterwards the Queen

Queen presented one P. to the Vicarage, who brought a *Quare Impedit* against the Bishop and his Collatee, pending which *Suit L.* the Collatee by Fraud and Deceit obtained a Presentation from the Queen, without mentioning her Pleasure to revoke the first Presentation. The Queen by Letter sign'd &c. by her, certified the Court that she had forgot the first Presentation, and laid her Pleasure was that it should stand firm. And in the Term following the Queen had Judgment, because L. having demurr'd, the Fraud and Deceit done to the Queen and the Court pending the Writ was confes'd by it, tho' the Notification thereof was not made under the Great Seal &c. D. 339. b. pl. 47. Hill. 17 Eliz. Price v. Bishop of Bath and Lancaster.

8. A. was presented by *Simony*, and died; the Patron presented B. the King presented J. S. and after a *General Pardon* came out with a *Clause of Restitution of Forfeitures*. And altho' the King may revoke his Presentation by exprefs Words, yet whether or no the general Words of *Restitution* contained in the Pardon shall amount to the Revoking of the Presentation, and of restoring to his Right of presenting, was a Great Question. Et adjournatur. Freem. Rep. 198. Trin. 1675. C. B. The King v. Turvill and the Bishop of Lincoln.

(X. a) Presentment. * Examination. What Time the Ordinary shall have to examine the Clerk.

* Examination is that Trial or Probation, which the Bishop or Ordinary makes before his Admission of any

1. BY the ancient Canons the Bishop had two Months Time to inquire and inform himself of the Sufficiency and Qualities of every Clerk to him presented, as appears by the Canon in 1 Ja. cap. 95.

Person to Holy Orders or to a Benefice, touching the Qualification of such Persons for the same respectively; so that there are two certain Times or Seasons especially, wherein this Examination is required; the one before an Admission to Holy Orders, the other before an Admission to a Benefice. The former of these is expressly enjoyn'd by the 35th Canon Ecclesiastical, whereby it is required, That the Bishop, before he admit any Person to Holy Orders, shall diligently Examine him in the Presence of those Ministers that shall assist him at the Imposition of Hands; or in Case of any lawful Impediment of the Bishop, then the said Examination shall be carefully perform'd by the said Ministers, provided they be of the Bishop's Cathedral Church, if conveniently it may, otherwise by at least 3 sufficient Preachers of the same Diocess. Godolph. Rep. 270. cap. 24. S. 1.

2. But by the Canon made 1 Ja. cap. 95. it is ordained that the 2 Months shall be abridg'd to 28 Days only.

Fol. 355.

3. Examination of the Clerk is to be done at a convenient Time within the 6 Months; for the Ordinary cannot refuse to Examine the Clerk during all the 6 Months, and to suffer a Lapse to incur to himself; for by so doing the Patron should lose his Presentation, and the Ordinary take Advantage of his own Wrong; but if the Ordinary, when the Clerk comes to be examined *Sedet circa Curam Pastoralem*, he is not then oblig'd to leave the Business in Hand, and presently examine the Clerk; but he may appoint a convenient Time and Place for the Examining of him. Godolph. Rep. 271. cap. 24. S. 3.

See Recu-
sant—Out-
lawry.

(Y. a) Presentment. *Refusal*. What shall be good Cause of Refusal. *In Respect of the Presentor.*

See of Outlaw-
ry in the
Patron.
Jenk 259. in
pl. 55.

1. **I**t is good Cause of the Refusal of a Clerk, that his Presentor being the Patron is excommunicated. 15 H. 7. 7. b. said to be held in our Books. Co. 5. *Specot* 58.

See (M. a)
pl. 1.

2. If 3 Jointenants are of an Advowson, or of a next Avoidance, and one or two of them only present; the Bishop is not any Disturber if he refuse him, for he is not bound to admit the Clerk, if all the Jointenants do not join in the Presentment. D. 14 El. 304. 54.

See (M. a)
pl. 1.

3. But if there are 3 Grantees of a next Avoidance, and after the Church voids, and two of them present the Third being a Clerk, the Ordinary is bound to admit him, because he cannot join in Presentment of himself, and he may relinquish his Title, and accept a Presentment from the other two. D. 14 El. 304. 54.

4. If 4 Coparceners are of an Advowson, and the 2 Eldest, or Eldest and the 3d present, and the others present another, and not all together, or the Eldest alone, the Ordinary may refuse all their Clerks. Co. Litt. 186. b. 1.

(Z a.) What shall be good Cause of Refusal. In respect of the *Presentee*. And for what Causes they may be refused. [*Crimes &c.*]

3 Le. 198. pl. 1.
251. S. C.
but no Judg-
ment —
And. 189.
S. C. —
D. 254. b.
pl. 2. Mich.
S & 9.
Eliz.
Bell v Bish-
op of Nor-
wich, and
after the Word (Criminosus) adds viz Et sic inhabilis & non idonea Persona esse instituenda in Vicariam prædictam &c. — Hob. 296. cites S. C. — But such Crimes as are *Mala in se*, as **Homicide*, *Drunkenness*, *Incontinency*, *Perjury* &c. are good Causes of Refusal. Ibid — * S. P. if the Clerk be attainted and not pardoned, but otherwise if he be pardoned; For then he is restored to the Benefit of the Law. Jenk. 259. pl. 55. cites Hob. 289 Searl's Case. — † S. P. Br. Quare Impedit. pl. 12. cites 33. H. 6. 12. & 32. 34 H. 6. 11. 38. & 35. H. 6. 18. — ‡ S. P. Br. Quare Impedit. pl. 119. cites 5 H. 7. 19. Per Keble. — || S. P. and so of Excommunication. Jenk. 259. pl. 53.

D. 8, 9. El. 254. 2. In Quare Impedit, the Bishop returned that at the Time of the Presentation of the Presentee, and all the Time of his Commorancy within his Diocese he commonly haunted Taverns and other Places, and unlawful and prohibited Games, Ob quod & diversa consimilia Crimina, the said Presentee was Criminosus. And by all the Justices, the particular Defects above do not make the Presentee Criminosus, because none of them deserve Refusal; For they are only Mala Prohibita. Co. 5. *Specot*. 58. cites this Case to be adjudged; And that the Words Ob diversa Crimina are too general and uncertain.

after the Word (Criminosus) adds viz Et sic inhabilis & non idonea Persona esse instituenda in Vicariam prædictam &c. — Hob. 296. cites S. C. — But such Crimes as are *Mala in se*, as **Homicide*, *Drunkenness*, *Incontinency*, *Perjury* &c. are good Causes of Refusal. Ibid — * S. P. if the Clerk be attainted and not pardoned, but otherwise if he be pardoned; For then he is restored to the Benefit of the Law. Jenk. 259. pl. 55. cites Hob. 289 Searl's Case. — † S. P. Br. Quare Impedit. pl. 12. cites 33. H. 6. 12. & 32. 34 H. 6. 11. 38. & 35. H. 6. 18. — ‡ S. P. Br. Quare Impedit. pl. 119. cites 5 H. 7. 19. Per Keble. — || S. P. and so of Excommunication. Jenk. 259. pl. 53.

2. 5. Co. *Specot* 58. Resolved that all such as are sufficient Causes to deprive an Incumbent are sufficient to refuse Presentee.

* For if he keeps them for two Months, Both shall be void; And therefore it is not at the

3. It is not any Cause of Refusal of Presentee, that he has another Benefice; For this is* at the Peril of the Presentee and peradventure the 2d Benefice is better than the first, and the first shall be only void; and therefore it would be mischievous to the Presentee if he shall be refused on this Account. 14. H. 7. 28. b. Curia.

is not at the Peril of the Bishop. — Br. Quare Impedit. pl. 92. cites S. C.

4. It is good Cause of Refusal, because the Presentee was Perjur'd, tho' no Conviction was thereof. D. 13 El. 293. 3. * 38 E. 3. 2. h.

Fol. 356.

5. So, it shall be, tho' he was Perjur'd in a Suit between the Ordinary and another. Dubitatur † 38 E. 3. 2. h.

* S. C. Cited
5 Rep. 58. a.
in Specot's
Case, and

says the Plea of the Bishop was, That the Presentee confess'd himself to be perjured &c. and so he was Criminosus; whence it is said it appears that to allege Criminosus generally, is not good; for no certain Issue can be taken thereupon, and it was doubted there if the Bishop ought not to say in Fact, That he is perjur'd, and not that he has confess'd himself to be perjur'd. —† Br. Quare Impedit, pl. 94. cites S. C.

6. It is good Cause of Refusal of a Presentee, because he is a Villein. 14 H. 7. 28. h. Curia. Co. 5. Spect 58.

Br. Quare
Impedit, pl.
92. cites

S. C. By Brian and the greater Part of the Justices and Serjeants — S. P. Br. Quare Impedit, pl. 119. cites 5 H. 7. 19. Per Keble.

7. It is good Cause of Refusal of a Presentee, that he has kill'd a Man. 38 E. 3. 2. h.

Br. Quare
Impedit, pl.
64. cites
S. C.

8. The Ordinary may refuse a Clerk upon his Conscience of an Offence done by the Presentee, which is good Cause of Refusal, tho' he be not convicted thereof by the Law; and this shall be tried by Issue whether it be true or no. 38 E. 3. 2. h.

9. It is good Cause of Refusal of a Clerk, because he is Simoniacus in the same Presentment, that is to say has made a corrupt Contract to be presented.

10. It is good Cause of Refusal of a Clerk, because he is Simoniacus in other Benefice than this, to which he is now presented. Trin. 16 Ja. B. between Boughton and the Bishop of Rochester in a Quare Impedit, per Curiam.

11. Nonability and Criminosus are sufficient Causes for the Ordinary to refuse the Clerk. Br. Quare Impedit, pl. 12. cites 33. H. 6. 12. 32. 34 H. 6. 11. 38. & 37 H. 6. 18.

S. P. Per
Keble Br
Quare Impe-
dit. pl. 119.
cites 5 H. 7.
19

12. If a Miscreant or * Schismatick be presented and inducted, this is good Cause of Deprivation. 5 Rep. 58. in Specot's Case, cites 5 R. 2. tit. Tryal 54. and says it was agreed to be good Law; So if he be Irreligious, he may be refused, as it is said in 5 H. 7. 6. But when he is charged with the One, or refused for the other, it must be alledged particularly, so that the Party may answer thereto. Ibid.

* S. P. And
so Heresy is
good Cause
of Refusal.
Jenk 259.
pl. 55. —

long to the King's Courts to determine Schisms or Heresies, yet the original Cause of the Suit being Matter whereof the Court of the King has Conscience, the Cause of Schism or Heresy upon which the Presentee is refus'd ought to be alleg'd in certain, that the King's Court may consult with Divines to know if it be Schism or not; and in case the Party be dead, then to direct a Jury to try it 5 Rep. 58. a. b. Resolv'd in Specot's Case.

And tho' it
does not be-
long to the
Court of the
King, yet the
original Cause
of the Suit
being Matter
whereof the
Court of the
King has
Conscience,
the Cause of
Schism or
Heresy upon
which the
Presentee is
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to be alleg'd
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that the
King's Court
may consult
with Divines
to know if it
be Schism or
not; and in
case the Party
be dead, then
to direct a
Jury to try it

(Z. a. 2) Refusal. What shall be good Cause.
Illiterature &c. not being Crimes.

See (Z. a. 3)

I. IN Quare Impedit, the Bp. pleads, That he demanded of J. S. the Presentee of the Plaintiff, to see his Letters of Orders, and he would not shew them; And for this Cause, for that he was not ascertained, whether he were Deacon or not, and also he demanded of him Letters missive, or Testimonials testifying his Ability, and because he had not his Letters of Orders, nor Letters Missive, nor made Proof of them otherwise to the Bishop, he desired Leave of the Bishop to bring them, and he gave him a Week, and went away and came not again, and that the six Months pass'd, and he collated by Lapse; And upon Demurrer upon it, it was adjudged for the Plaintiff; For these were not Causes to stay the Admit-

Le. 235.
S. C. And
Anderson
said, That
the Bishop
may examine
him upon
Oath if he
has Orders
or not, But
as to the
Letters
Testimonial
of his good

Behaviour and Sufficiency, the Bishop ought to examine the same himself, and if he gives Day and defers the Admission, because he is not resolved therein, he is a Disturber if the Clerk comes to him in a Convenient Time; And the Bishop cannot refuse a Clerk for the Want of Letters Testimonial.

2. Lutw.

1694 S. C.

but only

states the

Pleadings,

and does not

report the

Case. —

* He must

shew in what

Particular he

is Minus

sufficiens, 2

Sak 519

S. C. —

† The Court

inclined that

he was still

subject to an

Examination

of his Abili-

ty on a

new Promo-

tion, but gave no Resolution. Carth. 311, 312. S. C. by Name of the Bishop of Exeter v. Hele. —

± Show. Parl. Cases 88. S. C.

2. In Quare Impedit, Plaintiff counts that he was seised in Fee, of the Advowson, and that the Church becoming void, he presented one G. who died, and that it belonged to him to present, and the Defendants disturbed him; the Bishop claimed nothing but as Ordinary; and said that within six Months after the Avoidance, the Plaintiff presented Francis Hodder, who, at that Time was a Person * Minus sufficiens in Literatura seu Capax to have the said Church; That he examined him, and finding him Minus sufficientem, he refused him, whereupon he gave notice to the Plaintiff, and he not presenting within the six Months, the Bishop collated the Defendant; Plaintiff replies, That Hodder, at the Time of his Presentation &c. was in Holy Orders, and had been admitted there-to upon † Examination by the Ordinary, and was instituted a Vicar into another Church for divers Years, And was in Verbo Divino Dofus &c. The Plea was held good by 3 Justices (there being then no Chief Justice) but was adjourned to be further argued; Afterwards Treby being made Ch. J. it was held, per tot. Cur. to be an ill Plea, 3 Lev. 313. Trin. 3 W. & M. C. B. Hele v. the Bishop of Exeter and Hayman. — But this Judgment was ‡ reversed in the House of Lords.

(Z. a 3) Refusal. Trial. Where, and How the Cause of Refusal shall be tried. And Pleadings.

See (Z. a. 2)

It is requir'd

by Law, that

the Person

presented be

Idonea Per-

sona, for so

be the Words

of the King's

Writ, Præ-

sentare Ido-

neam Perso-

nam; And

this Idoneitas

consisteth in

diverse Excep-

tions against

Persons pre-

sented; 1st,

Concerning

the Person,

as Battardy,

Villenary,

Outlawry,

Excommunication,

a Layman,

Under Age,

and the like.

2dly,

Concerning

his Conversa-

tion, as if he

1. 9 E. 2.

cap. 13.

I

T

is

desired,

that

Spiritual

Persons

whom

our Lord

the King

doth

present

unto

Benefices

of the

Church

(if the

Bishop

will

not

admit

them

either

for * lack

of Learning,

or for

other

Cause

reasonable)

may not be under the Examination of Lay Persons in the Cases aforesaid, as it is now attempted, contrary to the Decrees Canonical; but that they may sue unto a Spiritual Judge for Remedy, as Right shall require. (2) The Answer; Of the Ability of a Parson presented unto a Benefice of the Church, the Examination belongeth to a Spiritual Judge, ‡ and so it hath been used heretofore, and shall be hereafter.

this Idoneitas consisteth in diverse Exceptions against Persons presented; 1st, Concerning the Person, as Battardy, Villenary, Outlawry, Excommunication, a Layman, Under Age, and the like. 2dly, Concerning his Conversation, as if he be Criminofus &c. 3dly, Concerning his Inability to discharge his Pastoral Duty, as if he be unlearned, and not able to feed his Flock with Spiritual Food &c. and the Examination of the Ability and Sufficiency of the Person presented belongs to the Bishop, who is the Ecclesiastical Judge; and in this Examination he is a Judge, and not a Minister, and may and ought to refuse the Person presented, if he be not Idonea Persona. And if the Cause of Refusal be for Default of Learning, or that he is an † Heretick, Schismatick, or the like, belonging to the Knowledge of Ecclesiastical Law, there he must give ‖ Notice thereof to the Patron; but if the Cause be Temporal, as a Felon, or Homicide, or other Temporal Crime, or if the Disability grow by any Act of Parliament or other Temporal Law, there no Notice ought to be given, unless Notice be prescribed to be given thereby. But in a Quare Impedit brought against the Bishop for refusal of the Clerk, he must †† shew the Cause of his Refusal specially and directly (for whether the Cause thereof be Spiritual or Temporal, the Examination of the Bishop concludes not the Plaintiff) to the Intent the Court, being Judges of the principal Cause, may consult with

Learned

Learned Men in that Profession, and resolve whether the Cause be just or no; or the Party may deny the same, and then the Court shall write to the Metropolitan to certify the same; or if the Cause be Temporal and sufficient in Law, (which the Court must decide) the *same may be traversed*, and an Issue thereupon joined, and try'd by the Country; and yet in some Cases, notwithstanding this Statute, Idoneitas Personarum shall be try'd by the Country, or else there should be a Failure of Justice, (which the Law will never suffer) as if the Inability or Insufficiency be alleg'd in a Man that is $\pm$ dead, this Case is out of this Statute; for the Bishop cannot examine him; and the Words of this Act are De Idoneitate Personarum presentate ad Beneficium Ecclesiasticum pertinet Examinatio &c. And consequently, tho' the Matter be spiritual, yet shall it be tried by a Jury; and the Court, being assisted by Learned Men in that Profession, may instruct the Jury as well of the Ecclesiastical Law in that Case as they usually do of the Common Law. 2 Inst. 632. — $\pm$ See (Z. a) — $\parallel$ See (R. a) &c. — $\dagger\dagger$ See Specot's Case.

$\dagger\dagger$ S. P. 12 Rep. 67. Mich. 8 Jac.

* In Quare Impedit against the Bishop he pleaded, that he refused the Clerk, because upon Examination he found him to be *Schismaticus Inveteratus*, and for that Reason he refus'd to admit him, as being a Person by the Laws of the Church, unable and unfit to take a Benefice with Cure of Souls. This Plea was adjudg'd in C. B. to be insufficient, because it was Generally Schismaticus Inveteratus; And upon Error brought in B. R. the Judgment was affirm'd; for the Statute of *Articuli** super Chartas*, cap. 13. says, *Propter defectum Scientie, and other reasonable Causes*, whereas *Causa vaga & incerta* is not a reasonable one; and tho' the Bishop (as it was urg'd) is Judge in the Examination, yet since his Proceedings are not of Record, the Cause of Refusal is traversable; and if it be travers'd, and the Party refus'd be alive, it shall be tried by the Metropolitan, but if he be dead it shall be tried by the Country. And if such general Allegations be admitted, Patrons will be much prejudic'd now-adays in their Presentations. 5 Rep. 57. Hill. 32 Eliz. B. R. Specot's Case — Alias, Specot v. Bishop of Exeter. — And. 189. pl. 225. S. C. adjudg'd. — Goldsb. 35. S. C. but no Judgment. — 3 Le. 198. pl. 251. S. C. but no Judgment. — And it was observ'd, that it appears in our books, that the Cause of Refus'd ought to be certain, as in 5 H. 7. 19. and 11 H. 7. 1. & 37. that the Presentee is a *Bastard, Vallem, Wilm Doe, or Idoneitate &c.* 5 Rep. 58. a. — ** These Words seem to be wrong, and that it should be *Articuli (Cleri.)*

$\dagger$ So as this Act is a Declaration of the Common Law and Custom of the Realm. 2 Inst. 632.

2. Quare Impedit against the Bishop and others; the Bishop said, that he S. C. cited examined the Clerk of the Plaintiff at B. in the County of C. and refused him 12 Rep. 67. Mich. 8 Jac. for Nonability, and gave Notice to the Plaintiff thereof, and he did not present another within 6 Months, by which he presented by Lapie; and the Plaintiff said, that his Clerk was *Alle*, and because the Clerk is now dead, this cannot be try'd by the Metropolitan by Examination, and therefore it was try'd *per Pais*, and this by the County of C. where the Examination was, and not by the County of D. where the Writ is brought; quod nota. Br. Quare Impedit. pl. 102. cites 39 E. 3. 1, 2.

3. In Quare Impedit if the Bishop justifies the Refusal of the Clerk because the Church was litigious 'till he inquired De Jure Patronatus, he shall not traverse all Refusals after the Inquiry, by reason that he has justified before; and if the Plaintiff alleges other Refusal after the Inquiry De Jure Patronatus, this is a Departure and Joceat; for he relinquishes his first Day alleg'd of the Refusal which ought not be; for if he will have Advantage thereof, he ought to have alleg'd this Day at first; for he shall allege only One Day. Br. Repleader, pl. 41. cites 33 H. 6. 13.

4. The Ordinary commanded the Clerk to come to him afterwards to be examined, because the Ordinary had then other Business. And there the better Opinion was, That it was a good Plea for the Ordinary, that he did not refuse the Clerk, but that the Clerk did not return to him again; and that the 6 Months passed, so as he made the Collation, and that the Patron made his Presentation too late, so as he had not convenient Time to examine him. 3 Le. 46. Mich. 15 Eliz. in C. B. cited by Lord Dyer, as * 14 H. 7.

* This is at 14 H. 7. 21. b. pl. 4. — S. P. 15 H. 7. 7. a. b. 8. a.

(A. b.) Disturbance by the Ordinary. What Act will make the Ordinary a Disturber. See (Z. a. 2. pl. 1. Marg

1. If the Ordinary admits and institutes the Presentee of the Chancellor, and sends to the Archdeacon to make Induction, and after the King, before Induction made, sends an Inhibition, reciting,

That the Church is of the Value of 40 l. per Annum, and so it does not belong to the Chancellor to present, commands the Ordinary to receive J. S. his Clerk, whom he presents; if the Ordinary does not send to the Archdeacon not to make Induction, but suffers the Induction to be made a Month after, he shall not be adjudg'd a Disturber; for there is not any Default in him. 38 E. 3. 4. 9. Adjudg'd.

2. But in this Case if the Inhibition had come to the Ordinary before the Warrant made to the Archdeacon to make Induction, if he had made the Warrant after, by which he had been inducted, he should be a Disturber. 38 E. 3. 3.

3. In Quare Impedit, the Bishop pleaded, that he claimed nothing in the Patronage but as Ordinary; A Writ to the Bishop is thereupon awarded against him, and after he collates; This makes him a Disturber. 8 H. 4. 22. b. 23. pl. 8. Bishop of Winchester v. Rye and Ux.

4. Where a Man presents, and his Title is found upon a Jure Patronatus, and he sues to have his Clerk admitted, and after another presents; there, if the Bishop could have admitted and instituted the Clerk of him who had the Verdict, and does not, but defers it 'till the Lapse falls, and then presents his own Clerk, in this Case he is a Disturber against Both the Presentors; and Issue shall be taken, Whether he, who presented and had his Title found, sued to have his Clerk admitted, or not; and Whether the second presented to him so hastily that he could not admit the Clerk of the first by due Process, before the Presentation of the second, or not. And so the Church is not litigious, but where * two present severally at one Time, and both Titles are found by diverse Commissions; or where one presents, and his Title is found by Commission, and before that the Bishop can admit his Clerk, another presents, quod nota. Per Newton; if two present to one Church at one Time now the Church is litigious; and there, if after the Title is found by Commission, the Hands of the Bishop are closed from taking Benefit by the Litigiousness, unless the other sues a Ne Admittas; for he is bound in Right to admit his Presentee for whom his Title is found; and in this Case Diverse Commissions ought to be awarded, and the Bishop ought to give to the Commissioners diverse Days, and ought to warn the one of the Day given in the other Commission, so that they may have Notice to come and give their Evidence, and yet such Titles found there shall not conclude the other Party in Quare Impedit; for it is only Inquest of Office. Br. Quare Impedit. pl. 80. cites 21 H. 6. 44.

* S. P. Per
Paslon. Ibid.

5. Where different Persons present their several Clerks, and the Ordinary accepts the Presentee of the one without Inquiry De Jure Patronatus, he is a Disturber; Per Port. Quod Newton & Markham concesserunt. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

Refusing to
award a Jure
Patronatus
when he is
required,
makes him a
Disturber.

Br. Nugaton. pl. 3. cites 33 H. 6. 13. — Br. Quare Impedit. pl. 12. cites 33 H. 6. 12.

* Orig. is
(Present)
and so are all
the Editions.

6. If a Disturber presents, and the Bishop inquires De Jure Patronatus, and another is found Patron, there, if he will present within the six Months, the Bishop is bound to admit his Clerk; but if he does not present he ought to * admit the Clerk of the Disturber. Agreed. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12. & 32. 34 H. 6. 11. 38. and 35 H. 6. 18.

7. If there are two Parsons, and the Bishop admits the Clerk of the true Patron, yet this is no Excuse in Quare Impedit; for it is no Plea, that he was Verus Patronus. Per Prisot, Quod non Negatur. Contra, If he had inquir'd De Jure Patronatus. Br. Quare Impedit. pl. 12. cites 33 H. 6. 12. & 32. 34 H. 6. 11. 38. and 35 H. 6. 18.

8. Whether if the Plea of the Ordinary be insufficient, he shall thereby be a Disturber? Goldsb. 35. Arg. says, It seems that he shall, and cites 14 H. 7. 21. b. and 5 H. 7. 20.

9. If after a Jure Patronatus, he admits the Clerk of the Patron against whom 'tis found, 'tis at his Peril, both as to the Title itself, and such Patron's defending it. And 'tis against Justice and the Intent of the Law,

to put the Party to the Delay and Charge of a Trial, and then act contrary to the Finding. And the Books, which say, that the Ordinary is to judge of the better Title, mean, that he *is not to prejudge of his own Head*, but *Secundum Allegata & Probata upon Verdict* given of the Right, and found according to the Form of Law to give Inititution, which is his Judgment, and Induction which is his Execution. And if the Patron bring Quare Impedit against the Usurper and Incumbent, not naming the Bishop, and makes good his Title, he may have an *Action on the Case* against the Ordinary *for that wilful wrong Delay and Trouble* that he hath put him to, and shall recover *Costs and Damages*, not in respect to the Value of the Church (for there is no Damages for that by the Common Law but by the Statute of Westminster 2d.) but for the other Respects. But if he *name the Ordinary in the Quare Impedit*, he can have no other Action on the Case; neither can he have such Action on the Case before he has *tried his Title* in a proper Action, and against the proper Parties. Per Hobert Ch. J. Hob. 317. Pasch. 17 Jac. in the Case of Elvis v. Archbishop of York, Taylor and Bishop.

10. Bishop *refuses a Clerk for Insufficiency*. Upon Notice the Patron *presents another*. The Bishop within the 6 Months admits the first. Per Cur. The Bishop is a Disturber; for he can't accept afterwards a Person refused by him for Insufficiency. Cro. E. 27. Pasch. 26 Eliz. C. B. Bishop of Hereford's Case.

11. Ordinary may examine and refuse, but both must be in convenient Time, else by his *Delay* he is a Disturber. 2 Salk. 539. Mich. 3 W. & M. B. R. Hale v. Bishop of Exeter.

32. pl. 39. Trin. 27 Eliz. in C. B. Albany v. Bishop of St. Asaph.

12. It was objected, That the Bishop *not giving Notice of Refusal for Illiterature till 32 Days after*, was a Disturbance Ipso Facto; but the Court gave no Opinion in this Point. Carth. 312. Trin. 6 W. & M. B. R. in Case of Bishop of Exeter v. Hele.

(A. b. 2) Disturbance. How punish'd. Pleadings &c.

1. **T**HE Bishop *incumber'd the Church after a * Ne Admittas directed to him within the 6 Months*, and the Patron brought Quare Impedit, and recover'd, and had Writ to the Bishop to disincumber the Church, who said that he had admitted the Plaintiff; Et non Allocatur. The Reason seems to be, inasmuch as he travers'd the Incumbrance, and upon the Incumbrance found it was *prayed that the Temporalities be seised*, as upon Attachment upon Prohibition; & non Allocatur. Br. Quare Impedit, pl. 145. cites 21 E. 3. 3.

* Orig. is (Non Omitas) and so are all the Editions, but the Year-Book is, Ne Admittat.)

2. Quare Impedit *against the Bishop of N. and others*; and at the *Discreet's the Bishop appear'd*, and the others made Default. Chaunt said the Bishop claims nothing but as Ordinary: Judgment if without special Disturbance shewn, the Plaintiff assign Tort in him. Caund said, We release our Damages, and pray Judgment and Writ to the Bishop. But per Babb. This cannot be; for the Damages are *not taxed*, but it *shall be recorded that you will not have Damages*; and so it was, and he had Writ to the Bishop. Br. Quare Impedit, pl. 150. cites 10 H. 6. 4.

3. The Bishop *may be a Disturber within the 6 Months*, and it is no Plea in Quare Impedit or Trespass, to *justify by Matter happening pending the Writ*; for it is brought of Disturbance before the Writ brought, which was a Tort, and cannot be defended by Matter subsequent. Br. Quare Impedit, pl. 80. cites 22 H. 6. 28 & 29. Per Newton and Paston.

As in Quare Impedit against the Bishop of R. and W. D. the Bishop said that he claimed

claimed nothing but as Ordinary; Judgment if without special Disturbance Action may he have, the Plaintiff said that he presented his Clerk, and the Officer examined and found him able, and the Bishop would not receive him, but presented within six Months one J. &c. The Defendant said that he Examined him, and did not find him sufficiently Letter'd; and they were compell'd to join Issue, Able or Not able; quod non; and pending the Issue the Bishop Accepted, Instituted and Inducted him; and therefore the Plaintiff pray'd his Judgment of Damages; and Judgment was that he recover his Presentment and Damages, notwithstanding the Bishop alleg'd that it might be that the Clerk was not able at the Time of the Examination, and had in a better Letter after, and yet, because by the Admittance after, he has admitted him Always Able; therefore Judgment as above. Br. Quare Impedit, pl. 22. cites 40 E. 3. 25.

And so where two present severally, and he presents by one, and after the one brings Quare Impedit against the other, and he pleads *Ne disturba pas*, yet the Bishop may shew the Matter. Br. Quare Impedit, pl. 80. cites 22 H. 6. 28. 29.

4. And by some, Where the Bishop pleads *Ne disturba pas*, yet this shall not conclude the Bishop, but he shall say that he presented, and his Title was found by Jure Patronatus, and he presented his Clerk. Br. Quare Impedit, pl. 80. cites 22 H. 6. 28. 29.

5. Quare Impedit by two against an Abbot and W. C. Process continued to the Districts, and the Defendants made Default, and a Writ issued to the Bishop for the Plaintiffs, which was returned Not served, and Alias and Pluries awarded, and then the Bishop returned, that the 13th of October 1463. J. S. the Parson &c. resign'd to him, to which he agreed, and accepted the Resignation; and the 4th of December next the Bishop certified the Abbot then Patron of the Resignation, and the Church remained void till the 28th of January, by which the Bishop by Lapse made Collation to W. C. Clerk, who was Instituted and Inducted; and after this Writ were delivered to him the 12th July last after the Collation by Lapse. And by some the Certification is not good; for the Resignation and Collation were made pending the Quare Impedit. Per Cur. This does not appear to the Court, nor if W. C. who is presented be the same Person who is Defendant; therefore it ought to be shewn by the Plaintiff. And by some, He who is Defendant shall be bound by the Judgment of the Plaintiff, if he be the same Person who is presented; for he is Party to the Writ, and he who purchases pending the Writ shall be bound: Contrary of the Bishop here, he shall not be bound, for he is not Party to the Writ; and therefore if the Plaintiff will not plead certainly that the one and the other is one and the same Person, it shall be intended that he is a Stranger of the same Name; and therefore he averr'd accordingly, and that the Abbot was not Verus Patronus, and there it is agreed, that upon Death of the Incumbent the Bishop shall not give Notice to the Patron: Contrary upon Resignation. So upon Deprivation; and by the Judgment in the Quare Impedit the Abbot lost his Patronage, and was not any longer Patron; and therefore the Notice made to him after the Judgment, is not good by some. Br. Quare Impedit, pl. 123. cites 5 E. 4. 115.

* It is a good Plea to say, that he is Ordinary, and the Church was litigious. Brooke says, Quare if this be intended good, without saying that he had awarded a Jure Patronatus thereof. Br. Quare Impedit, pl. 119. cites 7 E. 3.

6. The Bishop said that he claimed nothing but Admission and Institution as Ordinary; Judgment if without alleging special Disturbance &c. Action lies; and the Plaintiff alleg'd Presentation to the said Bishop such a Day, and he refused, and so disturb'd &c. and then the Bishop shew'd that the Church before this Presentation was * litigious by Presentment before made by one N. And it was said there, that upon the first Plea the Plaintiff might have Writ to the Bishop; contrary upon the second Plea, and see the Pleading of those Pleas there. And per Cur. The first Plea is a good Plea. Br. Quare Impedit, pl. 119. cites 5 H. 7. 19.

7. In Quare Impedit against the Bishop of C. the Plaintiff counted how he was seised of the Advowson, and presented N. who was Admitted and Instituted &c. and after N. died, and the Church voided by 6 Months, and the Bishop made Collation to one M. by Lapse, who was in, and after died, by which the Church voided, and the Plaintiff presented &c. The Defendant said that J. B. presented this same M. to the Defendant as Ordinary,

inary, at whose Presentment he received him as Ordinary, by which he was Instituted and Inducted, Absque hoc, that he made Collation modo & forma proout the Plaintiff supposes. And per Keble, Fineux, Townsend and Brian Ch. J. this is a good Plea for the Ordinary to shew that another is Patron and not the Plaintiff, tho' he does not make to himself Title to the Advowson; for the Ordinary has Interest to meddle with the Church, as in Allise of Rent the Tenant shall compel the Lord to make to himself Title to the Rent; for there is Privy between them and between the Ordinary and the Patron; As in Wait the Tenant may say that the Lessor has granted the Reversion to J. F. to whom he has attorn'd. So of a Seignory granted &c. And so, that a Stranger has recovered the Seignory against the Lord; for the Ordinary may traverse this Thing alleg'd against him, which proves him to be a Disturber, without alleging Title in the other Person. And Per Rede, Jay, Vavisor and Davers, This is no Plea; for he does not plead as Ordinary, as to say that he claims nothing but Admission, Institution and Induction as Ordinary; Judgment if without special Disturbance &c. or to say that he Ne Disturba pas; for then the Plaintiff shall have Writ to the Bishop immediately, or to say that the Church is Litigious, or that his Clerk is Criminosus, but cannot intitle a Stranger without intitling himself. But Brian and Towns- end Contra; for otherwise there shall be a Mischief, that the Bishop shall be bound to admit the Clerk of whomsoever will present to him, which is not Reason: Et adjournatur; for the Ordinary has lawful meddling with the Church, As the Tenant has with the Seignory or Reversion. Br. Quare Impedit, pl. 120. cites 5 H. 7. 33.

(B. b) * Admission. † Institution and ‡ Induction.
Of what Things it shall be made.

1. **A** Donative may pass by Gift of Lay Patron without Institu-
tion or Induction. Da. 1. 46. b.

* Admission
is when the
Bishop upon
Examination
admits him

to be able, and says *Admitto te habilem*. Co. Litt. 344. a—S. P. Fin. Law 8vo. 89.—S. P. Godolph. Rep. 272. cap. 24. S. 6.

† Institution is when the Bishop says, *Instituo te Rectorem talis Ecclesie cum Cura Animarum &c. Accipe Curam tuam &c. mean*. But sometimes in a more large Sense *Admissus d. th. include Institutus* also; Cujus presentatus sit Admissus, i. e. Institutus. Co. Litt. 344. a—S. P. Fin. Law 8vo. 89.—S. P. Godolph. Rep. 274. cap. 24. S. 8.

‡ Induction is nothing else but the Putting of the Person into Actual Possession of the Church and Glebe, which are Temporalities of the Church, or the Making of a Clerk Comoleat Incumbent of the Church; This is Induction, and it is by Letters from the Bishop of the Diocess directed to all and singular the Clerks, Rectors, Vicars &c. within the said Diocess, to put the Clerk or his Lawful Attorney for him, and in his Name, into the actual Possession of the Church to which he had been Presented and Instituted, together with all the Profits, Dues, Members and Appurtenances whatsoever thereunto Belonging or Appertaining; of the due Execution whereof a Certificate endorsed on the Instrument of Induction, and subscribed by a competent Number of Witnesses, ought to be returned to the said Bishop or Ordinary, who may appoint the Archdeacon to give Induction. Godolph. Rep. 278. cap. 24. S. 16.

Induction is done in the following Manner; one of the Clergymen commissioned takes the Person to be Inducted by the Hand, lays it on the Key of the Church, and pronounce these Words, By Virtue of this Commission I Induct you into the Real and Actual Possession of the Rectory of &c. with all its Appurtenances; then he opens the Church-door, and puts the Parson into Possession thereof, who commonly tolls a Bell &c. and thereby shews and gives Notice to the People that he had taken Corporal Possession of the said Church. If the Key of the Church-door cannot be had, the Clerk to be Inducted may lay his Hand on the Ring of the Door, the Latch of the Church-Gate, on the Church-Wall &c. and either of these are sufficient. So it may be by Delivery of a Clod of the Glebe &c. Jac. Law Dict. Verbo Induction. Cites Country Parl. Comp. 21. 22.

2. In the King's Chapel at Westminster, when a Prebend is void, the King shall make Collation by a Patent to whom he please, and send him with it, and by Force thereof he shall take Possession. D. 4. 9. (Without any Institution or Induction is implied.)

Br. Presen-
tation, pl. 13.
cites 11 H.
4. 7.

3. If the King grants a Free Chapel to another, he ought to be * put in Possession by the Sheriff. 14 D. 4. 11. b.

* Put 35.

Godolph. Rep. 279. cap. 24. S. 16. S. C. and P. Watf. Comp. 17. 20. 26. 27.

4. If a Clerk be presented, he has not Possession before Induction.
11 D. 4. 9. Com. *Harc Bick* 528.

5. If the Bishop of Sarum be Patron of the Church of S. which is Presentative, and lies within the Diocese of Sarum, and it is the Corps of a Prebend in the Church of Sarum, and the Bishop of Sarum is also Patron of the Church of D. which is Presentative also, and lies within the Diocese of Winton, and after the Church of D. is united to the said Prebend, with the Assent of the Bishop, and Dean and Chapter of both Dioceses. By this union both Churches are to annexed and united, that if the Bishop of Sarum collates a Clerk to the Prebend, and he is thereupon install'd in the Cathedral Church of Sarum, he has thereby Possession of both Churches without any Presentation, Admission, Institution or Induction to, or by the Bishop of Winton; for inasmuch as he has Possession of the Prebend, he thereby has Possession of the Corps of the Prebend, and by the Union the Church of D. is Parcel of the Body of the Prebend. 10 Car. B. R. between *Leigh and Hellier* upon Evidence at Bar in an Electione Firmæ, upon the Trial of a Title of a Lease made by such Prebendary before the Statute of 13 El. of the Church of D. which was not confirmed by the Bishop of Winton, but only by the Bishop, Dean and Chapter of Sarum; and this held per Curiam to be good for the Cause aforesaid.

6. By the Laws of England the Acts of Presentation, Institution and Induction are all Authorities given by Law, and must be executed according to the Form prescribed by Law, and cannot be modified; for Actus legitimus non recipiunt Modum. For the Law gives the Church, and not the Patron and Ordinary, who are but Ceremonious Ministers, and are appointed their Manner and Form, which they may neither Exceed nor Abridge. Hob. 153. in Case of Golt and Glover v. Bishop of Coventry.

(C. b) By whom it shall be made. Admission. Institution. Induction.

It is not only Penal for the Bishop to institute, but the Institution is void; because it is an Act of Jurisdiction, from which he is suspended. But 11 Car. Rot. 446.

1. IF Archbishop visits his inferior Bishop, and inhibits him during the Visitation, if the Bishop has Title to collate to a Benefice within his Diocese by cause of Lapse, yet he cannot institute his Clerk, but ought to present to the Archbishop, and he ought to institute him, because during the Inhibition his Power of Jurisdiction is suspended. Trin. 13 Car. B. R. between *Dodson and Lynn*. This was a Point upon a special Verdict in the County of Lincoln, and the Civilians who argued this seemed to agree it, but the Case was argued upon another Point, and this not resolved. Intratur Cr. 11 Car. Rot. 446.

Question in Case of a Collation, whether if a Lapse happen the Bishop may collate? But the better Opinion is, he cannot; because it is not by way of Interest, but by way of Provision for the Cure, and to supply the Negligence of the Patron. This appears, because the Patron may present at any time after a Lapse, and before Collation. 3 Salk. 202. cites Pasch. 13 Car. B. R. Lunne v. Dodson — Cro. C. 4-5. S. C. and because this and another Point there concerned Ecclesiastical Jurisdiction, the Court required to hear Civilians, and it was argued accordingly; but the other Point being clear for the Defendant, Judgment was given for him upon that Point, and then this not being material, nothing more is there said about it.

Watf. Comp. Inc. Svo. 2-4 cap. 15. cites S. C.

2. The Ordinary shall send to the Archdeacon to make Induction. 38 E. 3. 3. b.

3. The Archdeacon shall make the Induction. 38 E. 3. 3. b.

But the Bishop may direct his Mandate to such other Clergymen as he pleases to make Induction, and cites Parsons Counsellor S.—The Archdeacon having received a Mandate for Induction makes a Precept Omnibus Literatis infra Archidiaconatum to induct, a Clerk not belonging to the Archdeaconry made the Induction, and held to be well enough. Arg. Vent. 320 Mich. 29 Car. 2. B. R. in Case of Robinson v. Wolly. Cites Noy's Reports. But says, (Quære that Case)

4. By

4. By Prescription the Dean and Chapter of Lichfield make Induction. 11 H. 4. 9. Godolph. Rep. 278. cap. 24. S. 16. cites S. C. — Watf.
5. So of the Dean and Chapter of Pauls. 11 H. 4. 9.

Comp. Inc. 8vo. 275. cap. 15. cites S. C. And that if Induction be made by the Archbishop when it appertains to the Dean and Chapter by Prescription, that Induction is said to be void, 11 H. 4. 9. but the contrary is held Fitzh. tit. Quare Impedit 162. that in such Case it is only voidable, and so resolved. Hall 36 & 37 Car. 2. C. B. 3 Lev. 211. in Case of Wrighton v. Brown.

6. An Induction made by the Bishop is * void, where it belongs to the Dean and Chapter by Prescription. 11 H. 4. 9. b. Contra. 14 H. 6. Quare Impedit 162. Adjudged of a † Prebend. S. C. cited 3 Lev. 212. in Case of Wrighton v. Brown —

* But Br. Executions, pl. 32. cites 11 H. 4. 7. 9. says it is good at the Common Law. — Br. Presentation, pl. 13. cites S. C. accordingly; because he is Officer and Ordinary immediate to the Court, and the Court will not take Consuance of Peculiar Jurisdictions. — Godolph. Rep. 278, 279. cap. 24. S. 16. cites S. C.

† Induction of a Prebendary must be by the Dean and Chapter, and not by the Archdeacon. Pl. C. 329. in Case of Hare v. Bickley.

7. An Induction by the Patron is void. 11 H. 4. 10.

Godolph. Rep. 278, 279. cap. 24 S. 16. cites S. C. — Watf. Comp. Inc. 8vo. 275. cites S. C. and Parsons Counsellor S. But Dr. Watson says, he supposes this is to be understood where it is done of his own Authority; For he says, he doubts not but that a Bishop may give Induction as well as Institution to a Benefice of his own Gift where the Right of Induction to a Benefice within his own Diocess is in him; or however that an Archdeacon may induct to a Benefice within his Archdeaconry, although he be Patron thereof; nevertheless, the Rule is, Modus & Conventio Vicunt Legem, and therefore De Jure Communi neither Bishop nor Archdeacon may induct a Clerk to their Benefices of which they are Patrons, yet by Prescription or Composition their Induction in such Case must be good. And accordingly, though the Bishop of Chichester does admit the Dean of the exempt Jurisdiction of Bartel within that Diocess, and does commit to him the Cure and Jurisdiction of that Church, yet the Patron thereof is to institute and induct the Dean, and the Patrons accordingly have given the Deans Institution and Induction for some Hundreds of Years; and without Question such Institution and Induction is good; but this Deanry was originally given to the Incumbent as a Donative only by the Patron, and the Bishop admits or approves of the Patron's Presentee, and commits to him the Cure and Jurisdiction by Composition only. Watf. Comp. Inc. 8vo. 275, 276. cap. 15. — R. S. L. 4 Vol. 17. S. P.

8. The King's Grantee of a free Chapel shall be put in Possession by the Sheriff of the County, and not by the Ordinary of the Place. 14 H. 4. 11. b. Godolph. Rep. 279. cap. 24. S. 16. cites S. C. and P. — Watf. Comp. Inc. 8vo. 276. cap. 15. cites S. C.

9. A. and B. two Patrons, pretend a Title to present. A. presented; the Bishop refused; whereupon A. sued in the Audience, and had an Inhibition to the Bishop. And afterwards, upon that Suit he obtained Institution and Induction by the Archbishop; after which the inferior Bishop instituted and inducted the Clerk of B. Whereupon Process issued out of the Audience against the inferior Ordinary. Thereupon a Prohibition was prayed, because the Ecclesiastical Court ought not to intermeddle after Institution and Induction; For this would be to determine the Incumbency. And therefore Quoad the Incumbency the Prohibition was granted; but not quoad the Contempt of the inferior Ordinary in granting Institution after he had been inhibited. Moor 879. pl. 1235. Trin. 15 Jac. Middleton v. Lawte.

10. Tho' the King may present to a Church, yet he shall not collate, admit, nor institute; for he cannot exercise the Spiritual Function. And if he brings Qua. Imp. against the Bishop and recovers, he ought not himself to make an Admittance, but must send his Writ to the Bishop to do it. Arg. 2 Bullst. 4. in Case of Stevenson v. Wood.

11. The Bishoprick of Gloucester being void, and the Archbishop of Canterbury Guardian of the Spiritualities, a Church became void. The Patron presented to the Archbishop, who admitted and instituted the Clerk, and granted Admittance to the Archdeacon for Induction, which was by an Instrument directed to certain Parsons, as usual, to do it. They omitted the S. C. argued, Vent 309. Patch. 29 Car. 2. and Bull 319. Mich. fol. the

lowing it
was argued
again, and
adjudged,
that the In-
duction was
void. —
2 Jo 78. S.
C. adjudged;
but Ibid - 9.
says, it was
afterwards reversed in the Exchequer Chamber. — See 3 Keb. S. C.

the doing it for 2 or 3 Montbs, and in the mean time a Bishop of Glou-
cester is made and consecrated, and afterwards the Parsons made the Induc-
tion. Adjudged per tot Cur. that the Induction is void; For though
it belongs to the Office of Archdeacon, yet his doing it is only by
Mandate and Authority of the Bishop, and they held it to be no more
than if a Man makes a Letter of Attorney to make Livery and dies,
and the Attorney makes Livery after his Death. 2 Lev. 199. Trin. 29
Car. 2. B. R. Robinson v. Woolley.

Fol. 358.

(D. b) *What Thing shall amount to Institution and Induction.*

1. **T**HE Provision of the Pope is as an Institution. 11 D. 4. 76. b.

2. And when the Clerk is put in Execution by force of the Provi-
sion, it shall be as an Induction by Force of the Bulls. 11 D. 4.
76. b.

3. A Parson, Vicar, or Chauntry Priest may be admitted and insti-
tuted he not knowing it. As if the Patron sends to the Bishop to admit
his Clerk, and he agrees to it; and if the Bishop says, in the Absence of
the Clerk, to *J. N. I admit thee to the Church of D. in the Name of the*
Clerk, this Admission is an Institution though the Clerk be absent; but
there he may refuse, because he was absent at the time &c. Br. Quare
Impedit, pl. 155. cites 32 H. 6. 28. by a Doctor of the Law.

4. Where a Recovery is in *Qua. Imp.* and the Bishop upon Presentment
will admit and institute his Clerk, and he is inducted, and this without
any Writ to the Bishop, This is good, as well as a Man may enter
without an Habere facias seisinam after Recovery. Hutt. 66. the third
Resolution in the Case of Rud v. Bishop of Lincoln.

(D. b. 2) Admission, Institution, or Induction. *Good.*
And the Effect thereof.

1. **P**ersona Ecclesiæ numquam dicitur *Impersonata* ante Inductionem;
nec habet Jus in Re, sed ad rem, ante Inductionem. D. 221. b.
pl. 19. cites Hill. 38. E. 3. Per Thorp.

But it was
said, That
Writ of Right
of Advowson
does not lie

without Induction;
For he shall allege the Esplees, as in Great Tithes and Small Tithes &c. Br. Quare
Impedit. pl. 1. cites 22. H. 6. 27 — S. P. Ibid. pl. 10. cites S. C. & 33 H. 6. 24. — S. P. Br. Ibid. pl. 83.
cites 22 H. 6. 25.

2. Note that a common Person may have *Quare Impedit* against ano-
ther, though his Clerk was not inducted; For the Entry is there, *Quod*
admissus & Institutus fuit. Br. Quare Impedit, pl. 1. cites 22 H. 6. 27.

The Clerk
shall not
have the
Profits be-
fore Induc-
tion, but the Ordinary shall sequester them. Per Nichols J. Roll. R. 461. Pasch. 14 Jac. in Cam. Seque. in
the Case of Colt v. Glover — Institution intitles the Parson to the spiritual Profits as Oblations &c
before Induction, and he is liable to be sued for neglecting the Cure, but he can not sue for Great Tithes,
For they are Temporal 11 Mod. 46. pl. 12. Pasch. 1705 B R. Anon.

3. The Incumbent has *no Remedy for the Profits, nor can he try his*
Right, till Induction. Per Popham. Cro. E. 653. Hill. 41. Eliz. C. B. in
the Case of Quarles v. Fairchild.

4. Ad-

4. Admission, Institution, and Induction *without a Presentation is void.* S. P. Adjudged accordingly.
6 Rep. 29. b. Trin. 44 Eliz. B. R. Green's Case.

Cro. J. 252. Mich. 8. Jac. B. R. *Hunston v. Cocket*, and cites S. C. — S. C. Cro. C. 99. 100 Mich. 3 Car. in Case of *Stephens v. Potter*, and says it was resolved accordingly, Anno 8 Jac. in C. B. — S. C. cited Arg. Gibb. 32. Pasch. 1 Geo. 2. B. R. in the Case of the King v. the Archbishop of Armagh — and cites Cro. J. 252. *Hunston v. Cocket*. S. C. cited Gibb. 34. But says that it is to be understood, that they do not put the rightful Patron out of Possession, but that he may at any Time present or bring Quare Impedit, and so it is taken in Lord Hobart 311, 312. which proves that *Hunston and Cockett's* Case, which is founded on *Green's* Case mistook that Resolution; therefore though the King might notwithstanding such Collation either present or remove the Incumbent by Quare Impedit, any time during the Life of such Incumbent, yet it does by no Means follow, that the Collatee was not a compleat Incumbent during his Life if not removed, and cites Cro. E. 207. 240. Dy. 293, 294

5. If a Gift be made to a Parson before Induction, it is good. Arg. Goldsb. 163. in the Case of *Robins v. Prince*.

6. If he alieny Consent of Patron and Ordinary before Induction, it is good. Arg. Goldsb. 163. in the Case of *Robins v. Prince*.

7. Before Induction he is not Patron to all Intents; For a Grant of Annuity before Induction is not good. Per Gawdy. J. Goldsb. 163. in the Case of *Robins v. Prince*. Cites Pl. C. 326.

8. He, who is instituted, may enter into the Glebe Land before Induction, Put before Induction and has Right to have it against any Stranger. Per Coke. Roll. R. 192. he has no Estate in the Glebe, nor Pasch. 13 Jac. B. R. in the Case of *Hitching v. Glover*.

can he receive any Tithes as Incumbent. Watf. Comp. Inc. Svo. 241. cap. 13. cites 28 E. 3 9 26 H. 8. cap. 15. cites S. C. & 38 E. & 3, 4 & 22 H. 6. 27.

9. By Institution the Incumbent has *Officium*, but *Beneficium* comes by Institution Induction. Per Doderidge. J. Poph. 133. Mich. 15 Jac. B. R. in *Rone's* Case. gives the Cure of Souls, but the Temporalities pass by Induction, Arg. Pl. C. 328. in the Case of *Hare v. Bickley* — Watf. Comp. Inc. Svo. cap. 15. cites S. C. & 38 E. 3. 4. & 22 H. 6. 27.

10. By Institution *habet Curam Animarum*, the Words of the Institution being Instituo te habere Curam Animarum, Curam tuam, & meam; S. P. Goldsb. 163. in the Case of *Robins v. Prince*. So that Curatus implies a Parson Instituted. Per Doderidge J. which Whitlock J. & Crew Ch. J. agreed 3 Bull. 310. Mich. 1 Car. B. R. in the Case of *Wrothmeal v. Gill*.

11. It was held, That Letters of Institution sealed with another Seal than that of the Bishop of the Diocese, and made out of the Diocese were good enough; For the Seal is not material, it being an Act made of the Institution, and the Writing and Sealing is but a Testimonial thereof, which may be under any Seal or in any Place; But they would advise. Cro. C. 242. Hill. 9 Car. B. R. in the Case of *Cort v. the Bishop of St. Davids*. But Vent. 16 Pasch. 21 Car. 2. B. R. in Case of *Heath v. Bryn* says, it seemed by the Court

that Letters of Institution must be under the Episcopal Seal,

12. A Presentation may be without Institution and Induction, the Bishop being Party. Resolved. Cumb. 302. Mich. 6 W. & M. B. R. in the Case of the Queen v. the Bishop of London and Dr. Birch.

(D b. 3) Admission, Institution, or Induction. Triable how; And Punishment of Refusing them.

1. Admission and Institution shall be try'd by the Ordinary, but Induction shall be made by the Archdeacon, and shall be tried Per Pais. Br. Quare Impedit. pl. 155. cites 32. H. 6. 28.

2. Induction is triable *by the Country*, and not by the Bishop. Pl. C. 229. b. in the Case of Hare v. Bickley—cites 21 E. 4. 7. & 33.

A sued a *Quare Impedit* against B. and Pending it B. was
3. Matters of Induction, and the Validity thereof, are triable at *Common Law*, and not in the Spiritual Court. Bull. 179. Trin. 9 Jac. Holt's Case.

Instituted and Inducted, and A. sued B. in the Spiritual Court to *Remove him*, and a Prohibition was prayed, because he cannot sue for the same Cause Duplici Foro; and 2dly, Because it is a Suit after Induction, and upon this last Point the Court granted a Prohibition. Lat. 205. Trin. 3 Car. Oliver v. Hufsey.

It was adjudged, that Action upon the Case lies against an Archdeacon
4. If the Bishop refuses to give Institution, the Clerk may have a *Quare Impedit*, or *Duplex Querela* to the Archbishop for it, but Action for Case will not lie against him. Roll. R. 64. in Case of Powle v. Godfrey.

who refuses to induct, but not against the Ordinary who refuses to institute; because there a *Quare Impedit* lies, or *Duplex Querela* before the Metropolitan. Mo. 836. pl. 1126. Mich. 12 Jac. Pole v. Godfrey.

If the Archdeacon refuses to induct a Clerk &c. he shall have an Action upon the Case. Cited 12 Rep. 128. as Fitzh. 47. H. 6. 8. and affirmed for good Law by all the Court, and that with this agrees 26 H. 8. 3. a. True it is, that it is held in 38 H. 6. 14 that in such Case he shall have Remedy against the Archdeacon to punish him, but saving the Opinion there, they cannot award him Damages in such Case, but he shall recover them at Common Law. 12 Rep. 128.

(E. b) *Resignation.* By what Words it may be.

This in the Margin is said to be the Case of Walrond v. Pollard—
1. **T**HE Word Resignare is not the proper Term of the Law for Resignation, but Renuntiare, Cedere, and Dimittere are the usual Terms of Resignation. D. 13 El. 294. b.

And Ibid. 294. a. Marg. pl. 6. cites Hill. 20 Jac. B. R. Fairchild v. Gay, where the Civilians held, that Resignare is not a good Word of Resignation, but the Judges Contra.

2. If a Prebendary gives Grants, Renders and Confirms to the Ordinary his Prebend, and the Possessions appertaining thereto, to Have and to Hold to him and his Successors in Fee, and subjects and submits to him Omnia Jura by reason thereof Qualitercunque acquilita, those Words are sufficient and amounting to a Resignation, tho' the proper Words are not therein. D. 13 El. 294. b.

Wats. Comp. Inc. Svo. 47. cites S. C.
3. A Resignation was made, and afterwards in the same Instrument a Condition was inserted, declaring it void, if A. or B. were not admitted by Assent of the Bishop within 6 Months. The Bishop within the 6 Months refused to accept the Presentation. It was insisted, that it is against the Nature of a Resignation to be Conditional, and that it must be Absolute, Sponte, Pure, and Simpliciter, and that this is an Act judicial to which a Condition cannot be annexed; And Judgment was afterwards given accordingly. Ow. 12. 34 Eliz. C. B. Gayton's Case.

4. One that had a Donative made a Resignation thereof by the Words (*de Ecclesia*.) Per tot. Cur. this Resignation extends to all the Possessions; For as the Donation to the Church extended to invest him with all the Possessions, so the Resignation extends to the same. Cro. J. 63, 64. Pasch. 2 Jac. B. R. Fairchild v. Gay.

(F. b) *To whom it may be.*

1. **A** Resignation ought to be to the immediate Ordinary, and not to the mediate Ordinary. D. 13 El. 294. b.

See Presentation, Parson &c (R) pl. 2.

For it is a Rule in the Canon Law,

that *Apud eum fieri debet Renunciatio, apud quem pertinere dignoscitur Confirmatio.* Godolph. Rep. 284. cap. 25. S. 3. — S. P. Dod. of Adv. 81. Lect. 15. — A Resignation (especially of a Benefice with Cure) cannot be made to void the same by the sole Act of the Incumbent, but the Ordinary must for that End also accept it, and declare the Church void; and till then the Patron's New Presentation will be null; and the Reason of the Law in this Case is partly because the Ordinary is to give Notice of a Resignation to the Patron, and that he may present again, and if he do not within 6 Months after Notice, that the Ordinary may provide for the Church; but more especially, I suppose, because the Bishop having Cure of all Souls within his Diocese, is to see that the Patrons to whom he has committed, and who have undertaken the Cure, and in whom thereby the People have an Interest, do not without a reasonable Cause leave their Charge; that it be not for Money &c or to live a Lay-Conversion, which he is not to suffer. Watf. Comp. Inc. 8vo. 68. cap. 5

2. A Prebendary cannot resign to the King, because though he be the supreme Ordinary, yet he is not the immediate Ordinary, and he is not bound to give * Notice to the Patron as the Ordinary ought, nor can make Collation of himself, but ought to present to the Ordinary. D. 13 El. 294. b.

Watf. Comp. 8vo. 49. cap. 4 cites S. C. and Over 294. b. 61. lard u. Watrend.

* S. P. Dod. of Adv. 81. Lect. 15. — Resignation to the King by a Dean of Wells, was adjudged good and effectual, in as much as he was Head of the Church of England, and as good as if it had been made to the Bishop, and the Deanry was void thereby. Adjudged, Nisi. D. 293. b. Mich. 12 &c 13 Eliz. Pollard v. Walrond.

3. Resignation cannot be but to a Superior; per Coke; Quod Haughton Concessit. And per Coke, a Bishop cannot resign to the Dean and Chapter. Roll. R. 137. Roll. R. 137. Hill. 12 Jac. B. R. Anon.

Watf. Comp. Inc. 8vo. 49. cap. 4. cites S. C.

4. Where two Persons have the Donation of a Donative as Founders, a Resignation to one of them is good. Relolved. Cro. J. 63. Pasch. 3 Jac. B. R. Fairchild v. Gayer.

Watf. Comp. Inc. 8vo. 49. cap. 4. cites S. C. — And being

made to one of the Patrons and a Stranger, yet it is good to both Patrons, and void to the Stranger, and especially it being made (Et quibuscunque aliis Personis, who have Interest &c.) Yelv. 60 S. C. — Brownl. 201. S. C.

(F. b. 2) *How Resignation may be. And when; And the Effect therof.*

1. **I**F two Parsons resign *Causa Permutationis*, the Church is not thereby void; for this is not Absolute, but Conditional. 3 Bulf. 218 Arg. cites 4 E. 3.

2. In Scire facias upon an Annuity recovered against a Parson, the Defendant said, that such a Day &c. at B. in another County, he resigned into the Hands of the Bishop of L. Ordinary there, who accepted it, and so it remains in the Hands of the Bishop; Judgment of the Writ, and no Plea; for it is only Argument, and so it seems that he shall say, that Not Parson, or traverse that he was Not Parson the Day of the Writ purchased nor after. Br. Traverse per &c. pl. 223. cites 7 E. 4. 15, 16.

3. Re-

Sec Estate, 3. Relinquation or Deprivation *shall not abate the Writ*, and yet such
(Q. a. 18) Acts by a Parson, Prebend &c. *shall avoid Letters made by him* who re-
tires or is deprived. Br. Deposition, pl. 8. cites 15 Alf. 8.

11 Mod 2-6 4. If an Incumbent relings, yet till the Ordinary agrees thereto he
Hill 8 Ann. remains Incumbent still. Arg. Lane 4. Mich. 3 Jac. in Case of Bret v.
B. R. Riley Johnson.—Cites it as lately so adjudged in C. B.
v. Adams.—

And if a Pre-

sentation be made by the Patron before the Agreement, and the Bishop admits, institutes and inducts upon
such Presentation it is void; For the Church was full. Cro. J. 197. Mich. 5 Jac. B R. Faine v. . . .
—It only puts the Freehold in *Abeance* till the Ordinary accepts. Arg. 3 Mod. 197. in the Case
of *Thompson v. Leach*, cites Cro. J. 198. D. 264. Br. tit. Bar. St. Yelv. 61. Sid. 387.—Re-
signation to a *Prebtor* makes not the Church void till it be accepted by the Bishop, and acknowledged by
him; so that a Presentation in the mean time is void, and special Verdict finding an Instrument under
Seal of the Bishop, on which was indorsed, that the Resignation was acknowledged and accepted by the
Bishop is not an absolute Finding that it was a Resignation in fact. Noy. 147. Smith v. Fox.

5. After a Clerk has *taken Institution*, he *may avoid* the Church again
by *Relinquation before Induction*. Watf. Comp. Inc. 8vo. 50. cap. 4.

(G. b) Voidance. Dispensation. In what Cases the Dis- pensation of the Pope shall prevent a Voidance.

The King brought Quare Impedit against R. Bishop of Sarum, and H. C. Bishop of St. D. of the Prebend of C. in the Church of Sarum, and counted that M Bishop of Sarum, presented this same H. C. now Bishop of St. D. to the said Prebend, and after the Bishop was translated to Bath and Wells, by which the Temporalities came to the Hands of the King, and after the said H. C. Prebendary was made and created Bishop of St. D. by which the Prebend voided &c. (For it was agreed, that where an Incumbent is created a Bishop, that his ancient Benefices are void in Fact immediately; For Sovereign cannot use the Office of a Subject; Quod Nota.) and the Bishop of Sarum made Bar as Patron as above, by which he made Collation, *absque hoc* that the Prebend voided the Temporalities being in the Hands of the King, and the Incumbent S. Bishop of St. D. said, that the Bishop of Sarum presented him, by which he continued Possession, *absque hoc*, that the Church voided the Temporalities, being in the Hands of the King, & non allocatur without making Title, by which he said, that before he was created a Bishop the Pope granted to him to retain his ancient Benefices, by which he retained it &c. And there it is agreed by Thirn, Hill, and Culpeper, that the Grant of the Pope cannot change the Law of England, and after the King left his Count in another Term, and counted upon the Statute of Provisions; and per Hank and Thirn, this Grant to retain is no Collation, Reservation nor Provision, and therefore out of the Case of the Statute; but Hill and Culpeper contra; And per Hill, the King is Patron paramount the Bishop, tho' the Bishop be immediate Patron; and it was agreed, that by the Creation into a Bishop the Church is void in fact immediately, and the Patron may present. Br. Quare Impedit, pl. 51. cites 11 H. 4. 37. 59.—Br. Prerogative, pl. 14 cites S. C. and says, Quare de toto.—Vaughan Ch. J. says, Their Meaning is to be learned, who say, that an Incumbent's Benefice is void by the Common Law, and not by the Canon Law upon his being made a Bishop. The Words of Thirning, who was Ch. J. in this Case of 11 H. 4. are, "That he supposed, that when a Man beneficed is made a Bishop, it is by the Law of Holy Church that his Benefice becomes void; and that the same Law which give the Voidance, may cause that it shall not be void, and that that concerns the Power of the Pope." And Vaughan says, The Common Law does not prohibit Pluralities, nor make a Voidance of his Benefice when the Incumbent is Bishop, but it is by the ancient Ecclesiastical Law of England. Vaugh. 22. in Case of Edes v. Walter, Bishop of Oxford.

2. In a Quare Impedit, the Defendant pleaded in Bar the Statute 21 H. 8. that if the Incumbent hath a Benefice with Cure of the yearly Value of 8 l. and is inducted into another &c. the first shall be void, and alleg'd that the former Incumbent had &c. The Plaintiff replied the Statute 25 H. 8. that a Chaplain to an Earl might have a Dispensation to hold two Livings, and that the former Incumbent was such. And the Question was, Whether the Pope before that Statute could grant such Dispensations at Common Law; and it was argued that he might, for at first every

every Bishop had Power to grant Dispensations for Pluralities, till they by their Indiscretion lost their Power, and it was abrogated by a General Council held Anno 1273. to which Council this Nation sent two Bishops; and this Constitution has been received since till H. 8.'s Time; But the Court did not speak to it; but the Plaintiff was so discouraged that he would not proceed. And sic pendebat. Mo. 119. pl. 264. Mich. 24 & 25 Eliz. Dolman v. Bishop of Sarum.

* (G. b. 2) [Voidance. Dispensation.] Plurality.

* There is no Letter to this in Roll.

1. **I**f an Incumbent has a Dispensation for a Plurality from the Pope, and he takes a second Benefice he may keep both, and neither shall be void, * because it is not a Voidance by Common Law, but by a Canon and Law of the Church; and therefore the Church may dispense with it. 11 D. 4. 60. b.

Lord Ch J. Vaughan

* Fol 350.

takes Notice, that it

passes in the New Books for Current, that in Case of Pluralities the Voidance is by the Canon Law, and therefore may be dispensed with by the same Law; but that in Case of a Bishop made, the Voidance is by the Common Law; but he says, that if the Canon Law be made Part of the Law of this Land, then it is as much a Law of the Land, and as well and by the same Authority as any other Part of the Law of the Land; and if it be not made the Law of the Land, then hath it no more Effect than a Law of Utopia; therefore the Canon Law here is the Law of the Land. Vaugh. 21. in Case of Edes v. Walter Bishop of Oxford

2. **I**f a Parson has a Dispensation to retain the Benefice, if he enters into Religion, the Church shall not void it the Entry into Religion be afterwards. Dubitatur. 11 D. 4. 60. b. 77. b.

3. **A** Monk or such Religious cannot have Benefice by Licence, unless he has a Bull of Exemption. 11 D. 4. 78. Quare.

Br. Premunire, pl. 14. cites 11 H.

4. 37. where it was said by some that it had been us'd to make Dispensations, and to grant to one who entered into Religion to retain his first Benefices.

4. **I**f an Incumbent has Dispensation to retain the Benefice, tho' he be deprived; this shall not save the Avoidance, if he be deprived after; (for it seems it is repugnant.) Contra 11 D. 4. 60. b.

5. **I**f a Bastard be a Parson, if the Pope makes him able before Privation, he shall retain the Benefice. 11 D. 4. 78. Granted. (It seems he shall not be deprived in this Case.

So if such a Person obtains a Dispensation from the

King or Archbishop before he be deprived, he shall retain the Benefice. Watf. Comp Inc. Svo. 257. cap 14. cites 11 H 4 33. 76. 77. &c.

(H. b) In what Cases the Dispensation of the King shall prevent a Voidance.

1. **I**f the King gives Licence to an Incumbent to be Incumbent and Bishop, if he be made Bishop after, the Benefice shall not void. 11 D. 4. 60. D. 39 El. B. R. between * Armiger and Holland. Per Curiam resolved.

* Mo. 542. pl 719 S. C. and P. resolved. Cro. E 542. Hill. 39

Eliz. S. C. adjournatur. — Cro. E. 601. S. C. and P. resolved. — 4 Rep. 75. 2. S. C. by Name of Holland's Case.

2. Henry de Blois the Brother of King Stephen, was Bishop of Winchester and Abbot of Glassebury. Liber Successionis 19.

11 H. 4. 33 Hunkford referr'd to

this Case, and said that the same Person had the Possessions and the Dignities of them at the same Time. — In the Time of H. 6 Henry Beaumont the King's Great Uncle, being made Cardinal, had the Pope's

Dispensation to retain the Bishoprick of Winchester; and tho' it was held then, that this Dispensation came too late, yet afterwards in the Time of H. 8. Cardinal *Wolsey* having, before he was created Cardinal, obtained the Pope's Bull to retain the *Archbishoprick of York* as Perpetual Administrator, and the *Abbey of St. Alban's* in Perpetual Commendam, he held both during his Life by Virtue of this Dispensation. Dav. Rep. 8. a. cites 27 H. 8. 15. b.

(I. b) In what Cases the Dispensation of the Pope subsequent shall toll the Benefit of a Voidance. [Voidance by the Canon or by Statute, when and in what Cases. And Pleadings.]

To 424. S.C. See pl. 2. in the Notes there.

* If he'ore the Statute of 21 H. 8. a Man had taken two Benefices, it had not been good without a Perinde Valere in the Spiritual Law, and the Meaning of the Law was to help one that was a Chaplain to Noblemen, and not such as are Hunting Chaplains that hunt after Benefices. Per Popham. Goldsb. 164. Hill. 43 Eliz. in the Case of Robins v. Prince.

1. If an Incumbent be created Bishop, the Dispensation of the Pope after to retain the Benefice also shall not oust the Patron of the Presentment. 11 H. 4. 38. b. 59. b. 78. b. clearly agreed.

2. If an Incumbent of a Church, with Cure under 8 l. per Annum, takes a second Benefice with Cure, in which he is also Instituted and Inducted, by which the first is void against the Patron, so that he may present, but before Presentation the Archbishop by Force of the Statute of 25 H. 8. gives to him a Licence (perinde Valere) to hold the 1st with the 2d Benefice, tho' he was Instituted and Inducted before into both; this is not a good Licence, tho' confirmed according to the Statute to take away the Presentment of the Patron, tho' it is a Voidance by Force of the Canon, and not by Force of the Statute of 21 H. 8. For by the Canon the first Benefice was so void, that the Patron might have presented before any Deprivation; and therefore after such Time as the Patron had Power to present, this Power cannot be taken away by a Licence. Trin. 14 Car. B. R. between *Caldeck* and the King, in Writ of Error upon a Judgment in Bank in Quare Impedit, where it was so adjudged upon a Demurrer; and now per Curiam of B. R. accordingly resolved, but Day given over to Michaelmas Term. But afterwards in the same Trinity Term adjudged accordingly per Curiam. *Interitus*. 13 Car. Rot. 1259.

See S. C. argued Mo. 434 to 448. by Name of Robins v.

* Fol. 360. Gerrard and Prince. And Ibid. 448. The Justices

3. If an Incumbent of a Church with Cure, above 8 l. Value, afterwards is Presented and Instituted into a 2d Benefice with Cure, but before Induction into it, he is made a Chaplain within 21 H. 8. and after obtains a Dispensation according to the 21 H. 8. to hold both; this Dispensation is not good, because tho' the 2d Church was not void within 21 H. 8. before * Induction, yet it was void by the Induction by the Canon; so that the Patron might have presented, the which cannot be taken away by a Retainer and Qualification after. Co. 4 Digby 79. Resolved.

doubted if the Qualification and Dispensation which came after the Institution, and before the Induction to the second Benefice, be sufficient by the Proviso of the Statute of 21 H. 8. to retain both Benefices; and Popham and Gawdy thought that it was not sufficient, because the Induction shall have Relation to the Institution, and the Benefice is taken by the Institution; and the Intent of the Statute was not, that the Qualification should serve them who might obtain two Benefices, but that first they should be Chaplains retained, and Qualified or Graduates, and then to acquire the Benefices; and if it shall be allowed that the first Benefice shall not be void till Induction, one might by Covin obtain 20 Benefices, and not be Inducted to any, and would never take Dispensation till he had first the Benefice; but Fenner and Clench e contra, that the Qualification and Dispensation is Time enough before Induction: And after at a Convocation of all the Justices of England, Hill. 41 Eliz. they agreed with Popham and Gawdy, by which Clench and Fenner Mutatis Opinionibus assented to the Judgment for the Plaintiff.—Goldsb. 162. pl. 97. S. C.—Jenk. 273. pl. 42. S. C.

4. King H. 4. Presented one that was incapable of his Presentation, and the Presentee was thereby Admitted, Instituted and Inducted, and afterwards

ward the Pope enabled the Presentee by his Bull, yet the King had a Scire facias, and thereby recovered his Presentation again, because the Incumbent was not capable when he was presented. Dod. of Adv. 74. Lect. 14.

5. 21 H. 8. 13. S. 9. Enacts that if any Person having a Benefice with 21 H. 8. 13. Cure of Souls, being of the yearly Value of 8 l. or above, accept another with Cure of Souls, and be Instituted and Inducted in Possession of the same, immediately upon such Possession thereof the first Benefice shall be adjudged void, or any Part thereof. Cro. E. 601. Armiger v. Holland. — Mo. 522. S. C. and P. — 8 l. Value of a Church shall be accounted as 'tis valued in the Valuation of the Benefice, and not according to the true Value, as it is upon Improvement, tho' Opinions have differed before; for the Statute hereof it was valued in the ancient Book of First Fruits and Tenth, which was rated 25 E. 1. And after when another Valuation was made 26 H. 8. then according to that Valuation. Cro. C. 456. cites it as adjudg'd 8 Car. in C. B. in Case of Drake v. Hill.

Availing in general, that 'tis of 8 l. Value, is sufficient, without saying it is of such Value in the Queen's Books, and it shall be taken to be according to the true Value thereof. Cro. E. 852. Bond v. Triplet — It shall be accounted according to the very Value of the Church. Nov. 28. Here v. Tricker — Same Cases cited Watf. Comp. Inc. 5vo. 6. cap. 2. — In all Precedents of Pleadings founded upon the Statute of 21 H. 8. it is expressly alleg'd that the 1st Benefice at the Time of accepting the 2d, was of the annual Value of 8 l. and so are the Precedents in Co. Ent. 309. c. 512. a. Which 6. and 857. And it seems also that where a Tenant found that the 2d Benefice is now of the clear yearly Value of 50 l. it is surely by Immaterial: For in a Trial at Bar of B. R. Hill. 2 W. & M. in Ejectment by JAMES LESSEE of Lr. HAFORD Dean of Windsor v. Dr. SAMBRE Dean of Guernsey, for the Rectory of H. in the County of Oxford, it was agreed by all the Justices that the Value shall be according to the Valuation in the King's Books, and the same Resolution was per tot. Cur. in the Exchequer, 6 Nov. 1692. in a Cause between STAMP and ARTHUR, by Bil. 2 Lutw. 1505. in the Case of SHUTE v. FRITH, the Reporter says he had this by good Information; and adds, That if the Value shall be taken as it was 50 Years before the Verdict, to what Purpose can it be to find by the Verdict, that then it was of the real annual Value of 50 l. For if the Value thereof shall be taken, as it was in the last Book of the first Fruits, this was 26 H. 8.

In Quare Impedit the Plaintiff set forth, That he was seised in Fee of the Advowson, and presented A. who took another Benefice, and so the Church became void Per acceptationem alterius Beneficii; and the Defendant demurr'd, because he doth not shew the Value of the 2d Benefice, nor that there was Cure of Souls belonging to it; And resolved per Curiam, That he need not, the Plaintiff himself being rightful Patron; but otherwise it is the Plaintiff did go to intitle himself by a Lapse, there he ought to shew these Particulars, that it might appear to be a Cession within the Statute that the Patron ought to take Notice of; but to the Patron it is sufficient that the Benefice be void; and altho' the second Benefice be but of the Value of 20 s. per Ann. yet the Patron may take Notice of it, if he will; but he is bound to take Notice of it according to GOSLAND'S Case 1 Co. And if Bise be taken on Vacavit per Cessionem, yet if it be found Quod vacavit per Mortem, it is for the Plaintiff if he be Patron, according to 1 Inst. 282. And so the Demurrer was over-ruled. Freem. Rep. 241. 242. pl. 253. Hill. 1677. Pridgeon's Case.

If there are two Parsons of one Church, and each of them has the entire Cure of the Parish, and both the Benefices of the Value of 8 l. per Ann. one dies, and the other is presented, this two Parsonage within the 21 H. 1. 13. and is within the Intent of the Statute, that none shall have 2 Livings or Benefices with Cure. Cro. E. 351. Anon. — Hob 158. S. P. but says that if the Churches had been united before, and then a Parson had been presented &c. to the United Church, it had been contrary.

S. 10. It shall be lawful for the Patron thereof to present another, as if the Incumbent had died or resigned, any Licence, Union, or other Dispensation to the contrary not extant standing. Let the Incumbent of the Church be what it will, the Patron, if

he pleases, may present upon the taking of the 2d Benefice. Per Vaughan Ch. J. in delivering the Opinion of the Court. Freem. Rep. 51. pl. 64. in Case of SHUTE v. HIGDEN.

Since the Statute of 21 H. 8. there have been diverse General Licences, and no Pluralities were ever conceived to be within them. Cro. C. 358. in Case of the King v. Pryft.

S. 11. Every Licence, Union, or other Dispensation obtained contrary to this Act shall be void. The Pope cannot grant to a Man to have two

S. 12. If any Person obtain (from Rome or elsewhere) any Licence, Union, Toleration or Dispensation, to receive any Benefice with Cure, he shall forfeit 20 l. to be divided betwixt the King and the Prosecutor. B. Parliament, pl. 13.

cites 11 H. 4. 6. 7. Per Horton, to which Hankford agreed — [* All the Editions of Br. have the Word (Not) but the Year-Book is in the Affirmative, if with the Consent of the Patrons.] — And in the Case of Edes v. Walter Bishop of Oxford. Vaugh. 23. Vaughan Ch. J. cites S. C. accordingly, and that if it were without the Consent of the Patrons, it was not dispensing to hold, but was a Granting away the Property of the Patrons, which a Dispensation could not — Galienus Cap. D. D. Archidiaconus Lewent.

Lewentis in Summo & Ecclesie Pauline Canonici us Residentiarius consecratus est in Episcopum Ecclesie Exoniensis una cum Sarisburiensi & Bangoriensi Novembris 12. 1598. Godwin de Presulibus p. 8. s. 28.

A had a Dispensation from the Archbishop of Canterbury to hold a *Triality*, and the Queen confirmed the Dispensation, with a *Non Obstante* aliquo Statuto. A had one Benefice before of the Gift of the Queen, and now took two more; but adjudged that the first was void by the 21 H. 8. D. 351. b. pl. 25. Cox's Case — If a Man takes a Triality which is not allowed him, he cannot by that take two Benefices, because his Dispensation is void. Per Hobart Ch. J. Hob. 158. in Case of Colt and Glover v Bishop of Coventry.

If a Parson has a Benefice above 8 l. per Ann. and then he takes a 2d Benefice with a Dispensation, and then takes a 3d, his first Benefice is only void. Adjudged per Curiam. Godb. 153 pl. 231. Mich. 5 Jac. C. B. Anon — Resolved that the first is void by the Statute of 21 H. 8. cap. 13. 4 Le. 237. pl. 3-8. Anon seems to be S. C. — S. P. And the Question was, Whether both the first Benefices or the first only should be void? And Heron said it was adjudged that both of them should be void. Noy 149. The King v the Bishop of Chichester.

If a Man has a Benefice with Cure worth above 8 l. he cannot without Qualification and Dispensation procure another with Cure to be added to it after, though they make but one Benefice; for this Cautel of Union is provided for by exprets Name. But of Unions before I am of another Mind, and Tolerations are also excluded, which is a proper Word for this Case of Commendam temporary; for it is not allowed but tolerated, *Non Præcepto sed Permissiore*, as the Canon speaks. Per Hobart Ch. J. Hob. 158. in Case of Colt and Glover v Bishop of Coventry and Litchfield. — Watl Comp. Inc. Svo. 328. cap. 16. c. 8. S. C. But Dr Watson says he rather thinks that the Statute is not prohibitory of Perpetual Unions, but hath Respect to Temporary Unions only, as for the Life of one Incumbent which the Archbishop may make, and sometimes hath made.

*The King's Chaplain Extraordinary is not capable of a Plurality within this Statute. 1 Salk. 161. Adjudged Mich. 12 M. 3. in B. R. and affirm'd in Cam. Scacc. by a Majority of one. Brown v. Mugg.

S. 13. *Provided that every Spiritual Person of the King's Council may purchase Licence or Dispensation to keep 3 Benefices with Cure, and the Chaplains of the King, Queen, King's Children, Brethren, Sisters, Uncles &c. may so keep each of them 2 Benefices with Cure.*

S. 20. *The Brethren and Sons of Temporal Lords (born in Wedlock) may purchase such Licence or Dispensation, to keep as many Benefices with Cure, as the Chaplains of a Duke or Archbishop*

S. 21. *The Brethren or Sons (born in Wedlock) of every Knight may keep two with Cure.*

A Petitioner within this Statute must be proved and proved with the Hand and Seal of the Qualifier. Jenk. 2-3. pl. 91. — And so are the Words of the Statute, and so Sealing only is not sufficient. Godb. 41. Queen v. Savacre. — By the Retainer of the Number allowed by the Statute, the Statute is executed, and the Person so qualified to retain has no further Power to qualify another, by doing it under Seal; for the Act is *provided always, that they shall have &c.* Savil. 100. The Queen v. Bishop of Lincoln and Skilling — *Having seen the Retainer under the Hand and Seal of the Peer that gives the Qualification, is good Evidence of the Retainer.* Litt. R. 1. The King v. Frankwell.

On a Question whether a Lease, granted to W. the Plaintiff, by a Parson of a first Living with Cure, and above 8 l. a Year, was good, he having accepted a 2d Living with Cure and of 8 l. before the Lease was confirmed by the Bishop, and he being Chaplain to Queen Eliz. but no Testimonial being produc'd (the Parson having been dead 30 Years, and the Lease continuing, as being made for 81 Years) it came in Debate whether a Retainer by Parol only by the Queen, was not sufficient. Coke Attorney General insisted that Chaplain may be retained by Parol without Testimonial, and that Qualification comes *timely enough*, if made before he is Impleaded; so that he has it in Pugno to shew to the Court, tho' he had it not at the Time of taking the second Benefice. And adjudged accordingly for the Reasons aforesaid. Sav. 135 pl. 213. Whetstone v. Hickford — Cro. E. 424. 425. Mich. 37 & 38 Eliz. B. R. S. C. Popham held that the Queen could not retain by Parol only; but Fenner e contra. It was shewn that Y during his Life was reputed her Chaplain, and performed the Office of Chaplain as well in her private Closet as elsewhere, and had all the Benefits as her Chaplain &c. Wherefore the Court said that it should be intended that he was her Chaplain, and well and duly retained; and therefore it was held that he was a Person able to make such Lease; and the Jury found for the Plaintiff — 1 Salk. 162. in a Note, in the Case of Brown v. Mugg. cites S. C.

S. 23. *Doctors and Bachelors of Divinity, Doctors of Law, and Bachelors of Law Canon, admitted to the said Degrees by either of the Universities of this Realm, and not by Grace only, may purchase such Licence to keep two Benefices with Cure.*

S. 29. It shall be lawful to Spiritual Persons, being Chaplains to the King, to accept (of the King's Gift) any Benefices, to what Number soever, without the incurring the Penalty of this Act.

If one being the King's Chaplain takes a Bishoprick, he

ceases to be the King's Chaplain, and Bishops are not in that Respect Chaplains to the King, within the Meaning of this Law ; So that the Clause of the Statute which gives the King Power to give as many Benefices as he will of his own Gift to his Chaplain, will not serve them. Per Hobart Ch. J. Hob. 157. in Case of Colt and Glover v. Bishop of Coventry — *The King by a Special Privilege in the Statute 21 H. 8. may give to any of his Chaplains as many Benefices as he please.* But otherwise it is of a Common Person ; for they are limited by the Statute. Adjudged 4 Le. 247. pl. 432 Trin. 11 Jac. C. B. Bishop of Exeter v. Wallop.

S. 14. Every Archbishop and Duke may have each of them 6 Chaplains.

The Archbishop's

Chaplain having one Benefice of the Gift of the Queen, procured a Dispensation to Have and Enjoy 3 Benefices incompatible, which the Queen confirmed under the Great Seal, Ita quod &c. Absque impedimento alicujus Statuti, aut aliqua alia re quacunque Non Oblante, by Virtue whereof he obtained two others incompatible. And it was a Question whether the first was void by the Statute 21 H. 8. or not. And the next Term Judgment was given for the Queen without Argument. D. 351. b. pl. 25. Trin. 18 Eliz. Coxe's Case. — The Reporter adds a Nota, that so much of the Act of 21 H. 8. as concerns the procuring Dispensations from Rome for Pluralities or Non-Residents, and all Words and Sentences concerning it, and also the intire Act of the 25th for granting Dispensations at Canterbury, are repealed by the Act of 1 & 2 P. & M. cap. 8. And by the Act of Eliz. 1. the entire Act of the 1 & 2 P. & M. is repeal'd, and also this Part of the 21 H. 8. and no Words of Reviving thereof; for this had been merely contrary to the Intent of the Act ; but in the Act of the 25th which is Revived, there is a Proviso and Restraint to Canterbury, for Dispensations derogatory or contrary to the Act of 21. which affixes the 21 to be in Esteem and Force. D. 352. pl. 25. at the End.

S. 15. Every Marquis and Earl may have 5 Chaplains.

An Infant Lord of 15 Years of

S. 16. Every Viscount and Bishop may have 4.

Age, retained a Chaplain, and held good within the Statute. 4 Rep. 119. cited in Acton's Case, as of the Queen v. the Bishop of Salisbury. Patch. 44 Eliz. upon a Retainer by the Earl of Southampton. — Watl Comp. Inc. Svo. 29 cap. 3. cites S. C.

If the Son and Heir Apparent of a Lord retains a Chaplain, his Father dies ; this Retainer is not sufficient, but there must be a New Retainer Jenk. 2.2. pl. 91. — Watl Comp. Inc. Svo. 33. cap. 3. cites S. C.

S. 17. The Chancellor, and every Baron and Knight of the Garter, may have 3.

S. 18. Every Dutcheffs, Marchionesss, Countesss and Baroneffs, † being Widows, may have 2.

† By these Words it suffices, that

she be a Widow at the Time of the Retainer. 4 Rep. 118. b. Hill 45 Eliz. C. B. in Acton's Case.

S. 19. The Treasurer and Comptroller of the King's House, the King's Secretary and Dean of his Chapel, the King's Almoner and Master of the Rolls, may each of them have 2, and the Chief Justice of the King's Bench, and Warden of the Cinque Ports, each of them one ; and each of the aforesaid Chaplains may purchase Licence or Dispensation to keep two Benefices, with Cure.

The Chaplain of a Lord having two Benefices with Cure, without a special

Licence or Dispensation of the Metropolitan, seems not to be in Danger of losing his Plurality by Force of the Act of 21 H. 8. because the Words are not that he must sue for a Licence &c. but that he may sue for such Licence &c. but he is thereby in Danger by the Spiritual Law. Quære bene inde. D. 312. b. pl. 88. Anon.

S. 24. Provided that every Archbishop, because he must use at Consecration of Bishops, 8 Chaplains ; and every Bishop, because he must use at the giving of Orders and Consecration of Churches 6 Chaplains, may have two Chaplains over and above the Number limited, whereof every one may purchase Dispensation, and take as many Benefices with Cure as is before assign'd.

S. 25. No Person, to whom any Number of Chaplains by the Provisions aforesaid is limited, shall advance any Spiritual Person, above the Number appointed, to receive more Benefices with Cure than is above limited ; and if they do, every such Person so advanced above the said Number shall incur the Penalty in this Act.

After Marriage with a Peer, the can't retain, tho' after Marriage with a Gentleman she may. *Jenk. 273. pl. 91. — Watf. Comp. Inc. Svo. 34. cap. 3. cites S. C. —*

6. 25 H. 8. 16. S. 2. Enacts that every Judge of the King's Bench and Common Pleas, the Chancellor and Chief Baron of the Exchequer, the King's Attorney and Solicitor-General may each of them retain one Chaplain, having one Benefice with Cure of Souls.

Goldsb. 162. S. C. — This Enrolment was agreed by the Justices not to be good either for the Manner or the Matter, but should be in a Roll; but the Neglect of that is only the Contempt of the Clerk, and not conditional to the Dispensation. *Mo. 447. ut ante. — S. C. cited Vent. 313. in Case of the Ironmonger's Company v. Nailor, that where the * 21 H. 8. appoints the Inrolment of Dispensations in Chancery, yet the not doing it does not invalidate the Dispensation. — Popham held the Inrolment good, and that it was an Offence in the Clerk only, and finable, but no Offence in the Party; for he may not procure the Clerk to make his Entry in another Course than the Custom is, and consequently no Fault in him. Goldsb. 164. 165. in S. C. of Robins v. Prince. — * [The Act appointing the Inrolment is not the 21 H. 8. but the 25 H. 8. cap. 21.]*

8. P. Rector of C. was elected Bishop of Oxford. Before his Consecration the Archbishop gave him a Dispensation pursuant to the Statute of H. 8. to retain his said Rectory with the Bishoprick, which the King confirmed by Letters Patents under the Great Seal, and that the Bishop might enjoy &c. so long as he continu'd Bishop of Oxford, with a Non Obstante aliquo Statuto, or other Matter. P. died; W. was elected Bishop of Oxford, and got Letters of Dispensation &c. to hold the said Rectory in Commendam &c. The Patron of C. brought a Quare Impedit. Judgment was given by the Opinion of the whole Court, That the Avoidance was by Death, and not by Cession. *Vaugh. 18 to 27. Pasch. 19 Car. 2. Edes v. Walter Bishop of Oxford.*

See (I. b.) pl. 5. in the Notes.

(I. b. 2) What shall be said to be Pluralities.

* S. having one Benefice was presented to a 2d, and then purchas'd a Dispensation, (which was too late) and then was qualified, and afterwards accepted the Archdeacons of Gloucester. Wray said, That a Doctor of the Civil Law affirm'd to him, that their Law is, That if One having a Benefice with Cure of Souls accepts an Archdeacons, the Archdeacons is void; But Wray said, That he conceiv'd that upon the Statute of 21 H. 8. the Law is qualified by this Proviso. *I. e. 316. pl. 442. Pasch. 31 Eliz. B. R. Underhill v. Savage. — S. C. shortly stated. 4 Le. 88 pl. 185. by Name of Savage's Case. — † Taking a Prebend does not make a Church void. Mo. 261. pl. 411.*

† It was said, that the 21st of H. 8. against Pluralities does not extend to Rectories where there are Vicarages endow'd, and Lindwood describes a Benefice without Cure, viz. Cujus Cura Vicariis perpetuo exercenda est; Otherwise, where the Vicar is Temporal and Removable. *Arg. Vent. 15. Pasch. 21 Car. 2. B. R. in the Case of Heath v. Pryn. — A Man was presented to a Church with a Vicarage endow'd, the Parson accepted of a Presentation to the Vicarage without Dispensation; whether this were a Plurality by the Law, and by the Statute of 21 H. 8. was the Question. Hobart Ch. J. was of Opinion, that notwithstanding they were several Advowsons, and several Quare Impedit might be brought of them, and several Actions maintain'd for their several Possessions, yet the Presentment of one Man to the Parsonage and Vicarage was no Plurality, because the Parsonage and Vicarage are but one Cure. And there is a Proviso*

viso in the Statute, That no Parsonage, that hath a Vicar endow'd, shall be taken by the Name of a Benefice with Cure within the Statute, as to make it a Plurality. Godolph. Rep. 296. cap. 26. S. 5 cites Mich. 22 Jac. B.R. Woodley and the Bishop of Exeter, and Manwaring's Case. Cro. par. 2. — [But I do not observe this Point there.]

2. In Quare Impedit, it appear'd, That the Incumbent of a Church in England was made a Bishop of Ireland; and afterwards the King granted to the said Bishop to have and retain the said Church for 6 Years in Commendam. It was held, that the Commendator, notwithstanding this Grant for 6 Years, hath yet Power to retain during his Life, and cannot be abridg'd by the Limitation for 6 Years; and it is like a Confirmation or Attornment, or Assent to a Legacy, and cannot abridge the Estate which is confirm'd, but that it shall enure according to the Estate which is limited. Per Hutton & Winch Justices. Cro. J. 692. Mich. 22 Jac. C. B. in the Case of Woodley v. Manwaring &c.

(I. b. 3) Voidance. At what Time by Pluralities.

1. IT was held Per Cur. That if any Parson who was ousted of his Parsonage in the late Wars, by that which they then call'd Sequestration, for not conforming to the Presbytery &c. had accepted another Benefice by Presentation, and Confirmation by the Commissioners or Triors, (there being then no Bishops) this was not any Avoidance of the 1st Living unless he continued in such Second Living the 25th of December, Anno 1659 (which is the Time mention'd in the new Statute) and shew'd his Liking thereto. Sid. 163. Mich. 15 Car. 2. B.R. Brown v. Spence.

2. It has been resolv'd in Holland's Case, and likewise in Digby's Case, in the 4 Rep. and often before since the Council of Lateran, Anno Domini 1215. That if a Man has a Benefice with Cure, whatever the Value be, and is admitted and instituted into another Benefice with Cure, of what Value soever, having no Qualification or Dispensation, the first is ipso facto void, so as the Patron may present another to it if he will; but if the Patron will not present, then if under the Value, no Lapse shall incur till Deprivation of the first Benefice, *and Notice; But if of the Value of 8l. or above, the Patron at his Peril must present within 6 Months by 21 H. 8. 13. Vaugh. 131. Hill. 22 & 23 Car. 2. C. B. Shute v. Higden.

S. P. Lane 20. in the Case of Dennis v. Drake. — cites 4 Rep. 79. b. in Digby's Case. — But in Mo. 12. It seems to be allow'd that Admission and Institution do not make the first

Cure void without Induction. Trin. 1 & 2 Ph. & M. Agar v. Bishop of Peterburgh and Denn — By the taking the second Benefice, and by the Induction thereto the first is clearly void. Cro. E. 601. Mich. 39 & 40 Eliz. B.R. Armiger v. Holland. — The Incumbent after taking the said Benefice may officiate the Cure till the King himself takes Care to do it or till another shall be admitted and instituted to it, and shall be subject to Payment of Tenths, and subject to Distress for Rent Charge and other Charge which lies upon the Rectory, because he takes the Profits as one that enters without Admission and Institution shall be, but neither the one nor the other can bring Action of Juris utrum, or Writ of Annuity, nor sue for either, nor plead as Incumbent in Possession in Quare Impedit, without a Qualification and Dispensation. Jo. 339. Hill. 9 Car. the King v. Prielt. — * Godb. 23. pl. 33.

3. Where a Parson is presented to a 2d Benefice there is a Difference between Non-subscribing and Not reading after Subscription, as to the making the first Church void; for the Statute 13 Eliz. prohibits Admission before Subscription, and makes the Admission, Institution, and Induction void; and in such Case the Party never was lawful Parson, and so the first Church not void; but otherwise, where he subscribes and does not afterwards read them within the two Months; for in such Case, the first is void and the second also. Per Vaughan Ch. J. and that the Value is not material. And Judgment accordingly. 2 Jo. 18. Shute v. Higden.

S. C. Vaugh. 129 Hill. 22 & 23 Car. 2. C. B. Adjudg'd. — S. C. & P. Per Vaughan Ch. J. And he seem'd to incline that the Not

Reading the Articles should not make the Benefice void ab Initio; but the Statute is, That Admissions, Institutions, and Inductions made contrary to the Act should be void ab Initio: Now he that does not subscribe is

not

not instituted &c. according to the Act, and so it is void ab Initio. Judgment for the Plaintiff Per tot. Cur. Freem. Rep. 52. pl. 64 Mich. 1672.

(I. b. 4) *Dispensations. Granted by what Words, and necessary in what Cases.*

The' he has not the Dispensation of the Archbishop, he seems not to be in Danger of losing his Plurality by force of the Act of 21 H. 8: because the Words are only, *That He may sue for a Licence &c* but he is in Danger by the *Spiritual Law*. Quære, bene inde. D 312. b pl 88

1. CHAPLAIN *advanc'd* to two Benefices with Cure *ought to have the King's Dispensation for Non-Residency*, and ought to be *Resident upon one of them*. Confirmation of the King, and Dispensation of the Archbishop are necessary regularly to maintain Pluralities. Jenk. 273. pl. 91. cites Rep. Drury's Case.

Watf. Comp. Inc. 8vo. 38. cap. 3. cites S. C.

2. Quære Impedit by the Queen for having taken a 2d Benefice, and a Lapse incurr'd; the Defendant pleads a Dispensation from the Archbishop. Upon Oyer of the Dispensation, which recited the two Benefices to be of small Value, and then said, *Unimus, incorporamus & anneximus* the one to the other for the Life of the present Incumbent, without the Word (*Dispensamus*) for the Taking thereof, It was objected, that this Clause could not enure as a Dispensation, because there was no such Intention, but to make an Union; and this cannot be an Union, because there is not the Concurrence of the Patron and Ordinary, Sed non Allocatur; for Per Curiam, tho' there cannot be a Perpetual Union without the Concurrence of the Patron and Ordinary, because 'tis a Loss to them, yet there may be a *Temporary Union*, i. e. to the Person; as in this Case, for the Life of the Incumbent, and this (as was said at the Bar, and not denied by the Court) *might be done by the Metropolitan alone*; for after the Death of the Incumbent the Union is dissolved, and no Loss accrues either to the Patron or Ordinary in the mean time, for one of them had his Presentation and the other his Admission; and this is a compleat Dispensation, and allow'd by the Statute 21 H. 8. (viz.) Any License, Use, Union, or Dispensation to the contrary, and no Necessity for the Word (Dispensation.) Cro. E. 719. Mich. 41 Eliz. C. B. the Queen v. Page and the Bishop of London.

Jo. 394 S.C. where the Words are *Dummodo non sit intra 10 Miles* the one of the other; and that the Justices agreed, That it made no Condition to make the first void. - Watf. Comp. Inc. 8vo. 39. cap. 3. cites S. C.

3. A Parson who had one Benefice, and being Chaplain to an Earl got a Dispensation to hold another, *Modo sit infra 10 Miles of the first*; and he accepted another, with Cure, and was instituted and inducted, but it was 17 Miles distant from the first; and the Patron not presenting to the first Benefice within 6 Months, the Bishop collated to the first, and his Collatee was instituted and inducted; and in Ejectionment, the Question was, Whether the Words (*Modo sit*) made it a conditional Dispensation, and the first Benefice void, when he took the second. Adjudg'd, that tho' these Words usually made a Condition, yet by the Civil Law they were only a Caution or Admonition, unless other Words are added, viz. That if he do otherwise, then it shall be void; and therefore in this Case all the Court resolv'd, that they shall not make a Condition, and the rather because of the great Inconveniency which might follow, to make a great many Benefices void by Lapse, which have been quietly enjoy'd under such Dispensations. Cro. Car. 475. Trin. 13 Car. B. R. Dodson v. Lynne.

4. The Defendant was Chaplain Extraordinary to the King, being Incumbent of Stockton, and afterwards inducted to the Rectory of Inkborough, being above the yearly Value of 8 l. by reason whereof Stockton was void, and so continued two Years; and then he was again presented

presented to it by the King, as upon his Title of Lapſe, and was instituted, and inducted again to Stockton, being likewise above 8 l. Value. Per * S P D Cur. 1st, A Presentation of the King of his own Chaplain * imports a Dispensation, which the King himself hath Power to grant as Supreme Ordinary, and such Presentee shall hold a Plurality without any previous Dispensation; But if such a Chaplain be presented to a second Benefice by a Subject he must have a Dispensation before he be instituted to it. 2dly, A Chaplain Extraordinary is not a Chaplain within the Benefit of the Act 21 H. 8. cap. 13 & 14. but only his Chaplains in Ordinary. Judgment for the Plaintiff, which was affirm'd in Cam. Seac. by a Majority of One. Nota, He has no Waiting Time, but his Name is only enter'd in the Book of the King's Chaplains; whereas a Chaplain within that Statute ought to be retained under Seal. 1 Salk. 161. Mich. 12 W. 3. B. R. Brown v. Mugg.

(I. b. 5) Qualification. What is good, or may become good *Ex post facto*.

1. **I**N *Quare Impedit* by the Queen to present to the Church of M. which was void by the Incumbent's taking another Benefice, not being qualified; the Defendant pleaded, That he was Chaplain to Sir James Crofts, Comptroller of the Household, and who by the Statute of 21 H. 8. might have two Chaplains, and might qualify them to take two Benefices, and that he had a Dispensation accordingly. The Plaintiff replied, That the said Sir James Crofts had two other Chaplains advanced to two Benefices, and who are still alive, and so the third could not be qualified &c. The Defendant rejoined, That one of those two Chaplains was discharged by the said Sir James Crofts, to be his Domestick Chaplain, so he hath now but two Chaplains, of which the Defendant is one; and upon Demurrer, it was adjudg'd, That after a Person hath retained his full Number, and they are certified Sub Signo & Sigillo to be his Chaplains, and thereby qualified to have two Benefices, tho' he afterwards remove them for any Displeasure, or otherwise, out of his Service, yet during their Lives he can qualify no other, for they are still his Chaplains at large, tho' not his Domestick Chaplains, and so are Chaplains within the Statute. Godb. 41. pl. 47. Trin. 28 Eliz. C. B. Rot. 1130. The Queen v. Savacre.

2. A Lord retains 6 Chaplains at one and the same Time by Letters Testimonial, where he is only intitled to retain three.—All six are preferred to six several Pluralities.—The three who are first promoted are warranted by the Statute, and yet the Retainer was not according to the Statute, But *In Aequali Jure Melior est Conditio Possidentis*. 4 Rep. 90. Trin. 43 Eliz. in Drury's Case.—cites D. 132.

3. Retainer of a Chaplain more than the Act allows is not made good by the Death of the other Chaplains afterwards, but he must have a new Retainer. Per 3 J. v. Gawdy; and adjudg'd accordingly, and the Judgment affirm'd. Cro. E. 839. TTrin. 43 Eliz. Drury v. the Queen.

4. If a Man be a qualified Chaplain to any Subject, and then be made a Bishop, his Qualification is void, so as he cannot take two Benefices De Novo after by force of that Qualification. Per Hobart Ch. J. Hob. 157. in the Case of Colt and Glover v. the Bishop of Coventry.

Owen 51. S. C. Adjudg'd. — Sav. 50. pl. 157. S. C. and that the Opinion of the Court was accordingly. — And. 202. pl. 236. S. C.

D 312. b. pl. 88. S. P. Jeak. 272. pl. 91. 1688, That neither of them is qualified.

4 Rep. 90. S. C.—lenk. 272. pl. 91. S. C.—D 512. b. pl. 88.

See (I. b) pl.
5. S. 29 in
the Notes.

(I. b. 6) *Retainer. How. And Qualification Annul'd
or Destroy'd by what Act.*

1. **A** LORD's Chaplain being sufficiently qualified with his Master's Testimonial Sign'd and Seal'd, that he is his Chaplain, and having also a Special Dispensation for a Plurality, and being once advanced to the Plurality, ought to enjoy it during his Life, notwithstanding his *Master's Death, or Departure from his Master's Service.* Per Carlin, Saunders and Dyer D. 312. b. pl. 88. Trin. 14 Eliz. Anon.

But the Reporter adds a
Quære, by
Reason of
the Case of
Whetcomb
[Whetstone]

2. A Countess had 2 Chaplains by Patent, and a 3d without. He *without* was first retained, and took 2 Benefices by Dispensation, and adjudged lawful; for the Patent is not of Necessity, but only in Case where he has Cause to shew it. The Retainer is good without Patent. Mo. 277. pl. 432. Pasch. 31 Eliz. C. B. The Queen v. Bishop of Lincoln and Skirling.

v. Hickford — Sav 101. pl. 181. S. C. — 4 Rep 89. b. S. C. — Jenk. 272. pl. 91. — Mo 561. pl. 63. Mich. 41 & 42 Eliz. Adjudged by Anderson, Glanvill and Kingmill, that he who was first retained should be prefer'd, and not he that first took a 2d Benefice, and got Dispensation; but Walmsley contra. The Queen v. Drury, as to the *first Retainer* — Cro. E. 724. 2 Justice, who before inclined otherwise, changed their Opinions; And so it was adjudged that the 3d Chaplain was not within the Benefit of the Statute 21 H. 8. 13. The Queen v. Drury.

4 Rep. 118.
Acton's Case.
S. C. —
Watf. Comp.
Inc. Svo. 34
cap 3. cites
S. C. And so
Dr Watson
says he con-
ceives, that

3. *Baroness's Widow* retains 2 Chaplains, and they purchase a Dispensation, and the Baroness *marries* before the Chaplains accept a double Benefice; yet they may take two Benefices, because the Marriage is no Discharge of the Service; but otherwise it is if *she dies*, or if the *Baron discharge the Chaplains*, as he may, but if he does not discharge them, but dies; there needs no New Retainer. Mo. 678. pl. 924. Mich. 44 & 45 Eliz. C. B. The Queen v. Bishop of Peterborough.

if any other Person capable of qualifying a Chaplain to hold a Plurality, discharges his Chaplain before he has taken the Benefit of his being qualified, he cannot afterwards lawfully hold two Benefices within the Statute 21 H. 8.

The Earl of
Westmore-
land retained
a Chaplain,
and after was
attainted of

4. *Attainder of the Lord &c.* is Discharge of the Service and Power to qualify; and those Chaplains retained and qualified before, who have not taken double Benefices, are *disabled* by the Attainder. Mo. 678. pl. 924. Mich. 44 & 45 Eliz. in Case of the Queen v. Bishop of Peterborough.

High Treason, and afterwards during his Life, the Chaplain having one Benefice of the Value of 8 l. accepted a second Benefice with Cure. And it was adjudged that the first Benefice was void; for tho' the Earl was alive, yet the Quality of his Person was altered; for by the Judgment he was become Ignoble. 4 Rep. 117. b. Hill. 45 Eliz. C. B. in Acton's Case. — Cites it as the Earl of Westmoreland's Case.

5. If an *Officer* allowed by the Statute to have one, two or three Chaplains, *retains* a Chaplain, and *after is removed* from his Office, in this Case the Retainer at the Common Law remains, but the Retainer upon the Statute is determined; for after the Remotion the Chaplain can't be Non-Resident, or accept another Benefice. 4 Rep. 118. Acton's Case.

(K. b) *Advowson. Avoidance. What will be an
Avoidance. Acceptance of a Bishoprick.*

The Church
is void in
fact immedi-
ately, and
the Patron

1. **I** F all Incumbent be made Bishop, the Church is void. D. 4. 5. Ma. 159. 34. Doctor and Student. 136. b. 7 D. 4. 25. b. 11 D. 4. 37. b. 24 E. 3. 26. b.

may present. Br. Quare Impedit, pl. 51. cites 11 H. 4. 37. 59. — All his Benefices void, and the King shall present, whosoever be Patron. Br. Quare Impedit, pl. 47.

2. If the Incumbent of a Provostry be elected Bishop of the Bishoprick which is Patron of the Provostry, and afterwards the King grants the Temporalities to him, yet the Provostry is void before Consecration; For he may refuse before, and he is not Bishop before Consecration. 41. E. 3. 5. b. *adjudged.* Watt Comp. fac. 8vo 355. cap. 2. cites S. C.

3. But after Consecration the Provostry is void. 41. E. 3. 5. b. *adjudged.*

4. So shall it be of a Prebend. 11. H. 4. 37. b.

5. If an Incumbent be created a Bishop of the same Diocese where he was Incumbent, the Church is void thereby; For he cannot be Sovereign and Subject. Da. 1. Commendam. 69.

6. So if he be created Bishop of another Diocese, the Church is void thereby, 11. H. 4. 37. b. 77. Because he, who has taken upon him the Office of a Sovereign, shall not retain the Office of a Subject.

7. If an Incumbent be elected Bishop, yet the Church is not void thereby before Consecration. 11. H. 4. 37. b.

8. If an Incumbent in England be made a Bishop in Ireland, yet the Church here is not void thereby. 24. E. 3. 2. b. If * Dean of York be made Bishop of Limerick in Ireland, this makes a Voidance of the Deanry as well as if he had been made Bishop of any Place in England. H. 3. Car. Regis, between *Evans and Afcuith*. Resolved per Curiam upon a Special Verdict, and ordered per Curiam, That this should not be spoke to any more but only to the Points in the Case.

*S. P. So of a Parson, agreed clearly; For the Constitution and Council that made it void is general.

ral, and not limited to any Place, and so it is resolved; E. 3. Fitzh. Trial. And so it was adjudged 21 Jac. C. B. in the Case of Woodley and the Bishop of Exon and Marwarig. Jo. 158, 159. S. C. — In this Case, the Dean, before Consecration or Confirmation, obtained a Patent, with large Words of Non Obstante re i-nere valeat in Commendam the said Deanry &c. and afterwards he was chosen Bishop of Bathol, and then also before Installation he obtained another Patent with a more ample Dispensation of retaining the said Deanry in Commendam. It was agreed by all, That the Church or Deanry &c. in England shall be void by Cession, if the Parson or Dean &c. be made a Bishop in Ireland; For the Canon Law in that Point is one thro' all the World; Also Ireland is governed by the Laws of England, and is now as Part of England by Subordinaty. The Judges argued two Days, and resolved that all Commendams are Dispensations, and that Cession commenced by the Canon and Council of Lateran; Secondly, that the King may dispense with that Canon, 11 H. 7. 12. For the Pope might, and now by the Statute 21 H. 8. that Power is given to the King Cumulative, by way of Exposition Veteris, and not by Introduction Novi Juris, and by that Statute a concurrent Power is given to the Archbishop of Canterbury, and may be granted by the King, or by the Archbishop &c. 3dly, That that Dispensation, after Election to the first Bishoprick and before Consecration &c. and also the Dispensation after Election to the second Bishoprick and before the Confirmation, is good enough in both Cases, and he remains a Good Dean, to confirm &c. And afterwards the Judgment in the Case, being an Action of Trepass, was given accordingly. Nov. 23, 24, 25. H. 22. Jac. D. R. Evans and Kirfin. v. Afcuith — Litch. 233. S. C. — Palm. 458. S. C.

9. If an Incumbent had been created Bishop, this had made a Voidance by the Common Law. 11 H. 4. 38. 60. 77. 29 E. 3. 44. It was said that heretofore when the Constitutions were made, by which Plurality was ousted, the which Constitutions commenced from Rome, yet from that Time it was Cause of Voidance in Banco Regis.

10. 26. E. 3. 55. b. it is said, That the Pope J. made Constitution that a Parson shall not have but One Benefice with Cure &c.

11. In a Quare Impedit, for hindring to present to the Parish Church of St. James, the Plaintiff declared, That St. Martin's being a large Parish by a Statute made 1 Jac. 2. the Parish of St. James's was to be taken out of it, and made a Parish of itself with Cure, and Dr. Tenuison, then Vicar of St. Martin's, first Rector, and appointed the Patronage after his Death to the Bishop of London and his Successors, and to the Lord Fermyn and his Heirs alternately, that Dr. Tenuison was afterwards made Bishop of Lincoln, so that it belonged to the King to present by his Prerogative; To this Declaration the Bishop of London demurred, and Dr. Birch pleaded the Statute 25 H. 8. And that by virtue thereof, the Archbishop.

S. C. Show. 413 to 425. & 441 15. 5-5.

* For that which he had before cannot be properly said to be Commended to him; 'Tis true, if the Incumbent had died during the Continuance of such Title the King might have left his Title to perfect. Per Cur. 4 Mod. 212. S. C. — Show 489. S. P. by

of Canterbury granted a Dispensation to Dr. Tennison, to hold this Church in *Commendam*, which the King confirmed *from the 22d of October till the first of July following* &c. To this Plea the Attorney-General demurred. The Court held, That the King's Turn is not served by * confirming this *Commendam*, because the Dispensation was only to save the Avoidance, and the Confirmation continued the Possession, but transferred no Right; It was objected, That † no Body can say the King shall present, when the Act of Parliament says otherwise, And that this was therefore a Case exempt from the Prerogative; but the Court held that this Act did not interfere with the Prerogative, because a *New Advowson must be subject to the Prerogative as an Old one is*; like an Estate-tail created by Act of Parliament, 'tis subject to such Bars as other Estates-tail, and the Wife shall be endowed of it. Then it was objected, That this New Church, as to Dr. Tennison, was a Kind of Donative, he coming in without Institution and Induction; And that by the very Words of the Statute, the presentable Right doth not commence till after him; And that in || Case of a *Donative*, the Promotion of the Incumbent makes no Cession. But Curia Contra; For in point of Estate the Right of Presentation commences by the passing of the Act immediately, but in point of Interest, not till the Avoidance. 2 Salk. 540. Mich. 7 W. 3. B. R. The King v. Bishop of London and Dr. Birch.

Eyre J. and says this appears by *Darkhurst's Case* D. 228. b. & 233. a. & 2 Roll. 344.

† H. H. Ch. J. seemed at the first to incline to this, but afterwards it was resolved, That this Act only divided the Method, and Turns of presenting between the Patrons, and not to exclude the King of his Prerogative. 3 Lev. 382. S. C. — And notwithstanding this Objection, the Right of Patronage even in this Case is vested immediately; It is like a Reversion for Life granted Cur. acciderit per Mortem of the Tenant for Life, which vests an Interest immediately, though to commence in Possession in Futuro. Per Cur. 4 Mod. 214 S. C.

|| The Court said, That this must be admitted to be Law; But if an Incumbent of a Donative is made Rector by Act of Parliament, as Dr. Tennison was in this Case, then the King has a Prerogative to present upon the Promotion of such Rector. 4 Mod. 213. per Cur. S. C.

(L. b) Taking of second Benefice.

By the Institution and Induction to the 2d Benefice, the first is void, tho' † Fol. 361. the first be under \$1. as well as if it was above that Value

Per Jones J. Jo. 404, 405. the King v. Baldecock — Dr. Watson says, If one of our Clergy be created a Bishop Suffragan of England, not any (as he conceives) of the Preferments he had before, do become void; but on the other hand, if he exercise the Office of a Suffragan by Commission he is thereby qualified to hold at one Time two Benefices with Cure, and cites Stat. 26 H. 8. cap. 14. However, his Benefice with Cure, taken after he is Suffragan, may (unless Dispensation prevent) void any Dignity he had before. Watl Comp. Inc. Svo. 43. cap. 3. — * Hob. 158. 166.

2. At Common Law, if an Incumbent had taken a 2d Benefice, with Cure neither the first nor second had been void. Co. 4. *Holland*. 75. b.

3. But by the General Council of Lateran, held Anno Domini 1215. it was ordained, That if a Man takes divers Benefices with Cure of Souls, the first shall be void, if he has not the Dispensation of the Pope. Co. 4. *Digby* 79.

Pluralities were first prohibited by the Council of Lateran, held under

Pope Alexander the Third at Rome, In Palatio Lateranenſi ibidem inceptum in Anno 1170 & continuatum uſque Annum 1179 which was Anno 26 H. 2. Arg. Mo 436 in the Caſe of Robins v. Gerard 4 Rep 79. in S. C. by Name of Digby's Caſe, it is ſaid by the Reporter to have been under Innocent the Third.—— Knighton's Chronicle Inter decem Scriptores, pag. 2422 l. 19, 20. ſays this Council was held under Innocent the Third, in Anno 1215.—— 2 Inſt 361. mentions it in the Year 1179.

4. This is ſo recited in Linwood, fol. 81. in the Conſtitutions of Peckham, where by the Provincial Synod the Conſtitution of the General Council is confirmed, and the Conſtitutions of Othobon in Linwood, that the laſt ought to be void, is repealed as too hard and ſtrict. Co. 4. Digby 79.

5. 27 E. 1. Rot. Pat. M. 16. in Appellationibus. Papa diſpenſavit cum J. de Langeton Cancellario ſuper Pluralitate Beneficiorum ſuorum cum Curis ſive Cura, quæ obinet, & ulterius diſpenſavit quod duo alia Beneficia cum prioribus recipere & retinere poſſit ſi Regi placuerit, & eidem Cancellario convenienter offerantur & Rex beneplacitum ſuum inclinat per patentes litteras.

6. If an Incumbent takes a ſecond Benefice with Cure, by which the firſt is void by the Canon againſt the Patron, ſo that he may preſent before any Deprivation, yet till Deprivation it is not void as to a Stranger; For if he ſue for Witches againſt a Parſonage, it is not any War againſt him that he has taken a ſecond Benefice. Cr. 13. Car. B. R. ſaid by Juſtice Barkley, that Juſtice Belberton in his Argument of the Caſe of *Truſt* ſaid, that ſo it was adjudged.

S. C. cited 2 Lutw. 1307. in Caſe of Sharp v. French — S. P. Cro. C. 356. — Warf. Comp. Inc. Svo. 9. cap. 2.

7. H. 11. E. 3. B. R. Rot. 21. The Biſhop of Durham preſented B. to the Prebend of W. of the Church of St. Andrew, and after preſented the ſame B. to the Deanry of the ſame Church. Et pro eo quod non liceat alicui duas Prebendas in una & eadem Eccleſia Collegiali poſſidere, [twas] Adjudged quod Rex recuperet Præſentationem ad Eccleſiam de W. prædicta.

Warf. Comp. Inc. Svo. 11. cap. 2 cites S. C. by which Caſe the Dr. ſays it appears, that if the

Church, void by Ceſſion upon Account of the Canon, be of the Gift of the Biſhop, and within his Diocēſ, it may go in Lapſe by the Biſhop's Neglect to collate, tho' no Deprivation be made of the Incumbent, or Notice given of the Avoidance.

8. Quare Impedit by the King, and counted by the Poſſeſſions of the Biſhop of B. (who was Patron of the Benefice) being in his Hands and that A. the Clerk and Incumbent accepted another Benefice, by which this Benefice is void, and remained void quouſque &c, and it was admitted for a clear Voidance. Br. Quare Impedit, pl. 98. cites 24 E. 3. 32.

But it was ſaid elſewhere, that this ought to have been certified by the Biſhop or the

Metropolitan, and that it is no Voidance in Faſt till he be deprived by the Spiritual Law, and Voidance in Law before. Ibid. cites 11 H. 4. 37. 59.

9. If a Man preſents one, who has a Benefice, and is admitted and induſed, this is a Ceſſion without more; But in Quare Impedit the Court ſhall not take thereof Notice before it be certified, becauſe it is a Thing ſpiritual; Per Brown Serjeant. Br. Quare Impedit, pl. 87. cites 14 H. 8. 16. 17.

10. Where the King preſents by reaſon of a Plurality and want of Qualiſication, and Verdict is found for him; in as much as the firſt Benefice is abſolutely void by the taking a 2d. the Verdict ſhall be, that the Church was full of the King's Preſentment Modo & Forma, as was alledg'd, and now is void; For Crook ſays, that if it be found that the Church is full of the Defendant by the Preſentment of the King, that it ſhall be intended, that it was void by the 2d. Benefice, and that the King preſented him anew. Litt. R. 1. Hill. 2 Car. C. B. the King v. Frankwell.

(L. b. 2) Avoidance, by *not reading the Articles &c.*

A Presentee read the Articles, and said, *I give my Assent unto them so far forth as they agree with the Word of God.* It was adjudged, That this

1. 13 *Eliz.* 12. **E**Naacts, that every Person hereafter to be admitted to a Benefice with Cure shall, * *within two Months after his Induction, publicly read the Articles of Religion in the Church whereof he hath the Cure, in Common-prayer time, with Declaration of his Assent thereunto, and be admitted to administer the Sacraments within one Year after his said Induction, (if he be not admitted before) in Pain upon every such Default to be deprived ipso facto.*

S. 7. *All Admissions, Institutions, and Inductions to Benefices, and all Tolerations, Dispensations, Qualifications, and Licences contrary to the contrary hereof, shall be void in Law.*

was not such unfeigned Assent as the Statute intended, but that it ought to be absolute and without Condition. Cro. E. 252. pl. 19. Mich. 33 & 34 *Eliz.* B. R. *Smith v. Clerke.*

* Upon a Trial at Bar in Quare Impedit, the Plaintiff proved, that he read the Articles upon the 5th of November, where his Induction was 5 September; This was ruled insufficient, because not within two Months after the Induction, computing 28 Days to the Month. Lev. 101. Pasch. 15 Car. 2. B. R. *Brown v. Spence.*

In Quare Impedit, the Plaintiff proved, that he read them in a Perch of a Chapel of Ease within the same Parish within a Month after his Induction, the Keys of the Chapel being detained from him by the Defendant, and this was admitted by the Court to be a sufficient Reading of the Articles within the Statute. Lev. 101. *Brown v. Spence.*

Immediately upon Not Reading the Articles according to the Statute, the Incumbent is deprived ipso facto, and the Patron may present upon such Deprivation presently if he will, and his Clerk ought to be admitted and instituted. Vaugh. 132. in Case of *Shute v. Higden.* — [But no Lapse shall accrue till after Notice to the Patron. 13 *El.* 12 S. 3.]

A Man had a Benefice Comparable, and without sufficient Dispensation took another Benefice Comparable, but did not subscribe the Articles as required by this Statute, and yet he was admitted, instituted, and inducted to the second Benefice, [and died.] And upon Issue whether the Church voided per Mortem &c. a special Verdict found as above. And the Opinion of the Court was, That the first Benefice voided per Mortem; and not by the taking the 2d. Benefice; For he never was lawful Patron thereof, by reason of this Statute. D. 377. b. pl. 31. Mich. 23 & 24 *Eliz.* Anon. — S. C. cited Vaugh. 133. in Case of *Shute v. Higden.* — In such Case the Admission and Institution are void, so that he never was Incumbent there, and consequently cannot be deprived. And. 65. pl. 136. Trin. 24 *Eliz.* in Case of the Queen v. Bishop of Lincoln and Cock. — Resolved by all the Justices, absente Popham, That in Case of the Presentee's not Reading the Articles, the Church becomes void presently, and there needs not any Deprivation; for otherwise the Statute would be defrauded at the Pleasure of the Ordinary, if he would not deprive. Cro. E. 679, 680. Trin. 41 *Eliz.* B. R. *Baker v. Brent and Robinson.* — The Church in such Case voids presently, without any Sentence declaratory; For the Statute provides, that he shall be ipso facto deprived, and the Admission, Institution, and Induction are merely void in Law; And Voidance by Act of Parliament need not have any Sentence declaratory. 6 Rep. 29. b. Trin. 44 *Eliz.* B. R. *Green v. Baker & al.*

2. In Debt &c. the Plaintiff counts, that H. Dean of Lincoln by Indenture dated 24 July, demised to the Defendant the Rectory of M. &c. who therein covenanted to find a sufficient Priest to serve in the Church of M. to be approved of by the Dean and his Successors, and to pay him 40 Marks per Annum at the least; and then sets forth the Statute 29 Car. 2. for perpetuating Augmentations to poor Vicarages, which enacts, *That every Augmentation made payable to any Vicar, Curate, &c. should continue payable to them; and that they might recover the same by Distress or Action of Debt,* then he says, that 5 July, 32 Car. 2. by the Approbation of the Dean at the Nomination of the Defendant, and with the Licence of the Bishop he was admitted; and from that time to this was Curate of the Church of M. and for 40 Marks Pension, due for a Year, he brings this Action. The Defendant pleaded in Bar, and confessed the Lease and Covenants, but says, that the Plaintiff was nominated &c. 5 Nov. 1677, and had Possession; but further says, that the Act of Conformity 13 Car. 2. by which it is enacted, *That all Ministers &c. shall, within two Months after the actual Possession of their Vicarage or Curacy, declare their Assent and Consent to all Matters in the Book of Common Prayer, and upon Neglect thereof shall be ipso facto deprived;*

and that the Patron may present &c. as if the Incumbent was dead ; And that the Plaintiff did not within two Months after his Possession declare his Assent, and that at no time after the 5th of November the Defendant did nominate the Plaintiff to the Dean to be Curate &c. the Plaintiff in his Replication contested the Nomination 5 Novemb. and that he continued in Possession till the 5th of July following, and being in Possession by the Consent and Permission of the Defendant, and by the Approbation of the Dean and Licence of the Bishop, he, within two Months after the said 5 July, declared his Assent and Consent according to the Statute. The Defendant demurred ; the Court agreed, that such Stipendiary may be within the Act of Conformity, tho' that is, that the Patron shall present as if he were dead, and here was no Presentation requisite in this Case, but only a Nomination. And that tho' he was ipso facto deprived for his Neglect in not declaring his Assent within two Months after his first Nomination and Possession, yet this Statute not disabling him from being nominated De Novo, and he continuing always in Possession, and performing his Office by the Allowance of the Defendant and the Dean till the 5th of July ; this amounts to a new Nomination, and therefore his declaring his Assent within two Months after the 5th of July, makes him a Curate within the Statute, and enables him to bring Action, and Judgment was given for him by the whole Court. 3 Lev. 82. Mich. 34 Car. 2. C. B. Carver v. Pinkney.

(M. b) * *Deprivation.* [And of *Caveats* to prevent Institution &c.]

1. IF the Incumbent be deprived, the Church is void by it. 11 D. 4. 60. b. 77.

* Deprivation is a Discharge of the Incumbent of his Dignity or

Ministry, when sufficient Cause against him is conceived and proved ; for by this, he loses the Name of his first Dignity, and herein two Manner of Ways, either by a Particular Sentence in the Spiritual Court, or by a General Sentence by some positive or Statute Law of this Realm. 1st Deprivation is in the Spiritual Court for that, that it is grounded upon some Defect in the Party deprived, although it be by Act of Law, yet it is deemed as the Act of the Party himself. The Causes of Deprivation, by Censure in the Spiritual Court, are to be referred to the Common Law. 1st *Want of Capacity.* 2dly, * *Contempt.* 3dly † *Crime.* As concerning the first, although by the Common Law, if a *Lay Person* be presented, instituted and inducted to an especial Benefice, which Curate is altogether incapable of the same, yet the Church is not therefore to be said void as if no Presentation had been, but it is still full of an *Incumbent de facto licet non de Jure*, until by *Sentence declaratory*, for his Want of Capacity, the Church be adjudged void, and upon this no Lapse shall incur against the Lay Patron, without Notice (of such Incapacity and Sentence of Deprivation thereupon) to him given. Dod. of Adv. 73, 74. Lect. 14.

* Contempt may likewise be a Cause of Deprivation, as if the Parson or other Incumbent be *excommunicate*, and he so remains in his Obstinacy for the Space of 40 Days, he is for this deprivable of his Benefice, and yet the Church is not void in Fact, without Sentence or Deprivation given against him ; and if before such Deprivation the King, as supreme Ordinary and the Head of the Church, would give a Dispensation to the Incumbent, that for all the Sentence of Deprivation for his Contempt had, he shall hold his Benefice, such Dispensation were void [good, Quere] and should restrain the Patron from his Presentation accrued to him by Means of such Deprivation after ensuing. Dod. of Adv. 76. Lect. 14.

† The 3d Cause is Crime, within which may be comprehended *Dilapidation*, or Spoil of the Church Benefice, once in our Books worthy of Deprivation, likewise *Schism* or *Heresy*; for the which, or if for some other Causes the Incumbent were deprived in ancient Time in the Court of Rome upon such Deprivation coming in Question in our Law, the Issue should be upon the Avoidance, and it should be tried where the Church or Dignity is. Dod. of Adv. 76.

[So that] 1st our Law adjudges not the Church actually void, without a Sentence of Deprivation as has been before proved. 2dly, That though such Sentence of Deprivation be merely *wrongful*, yet the Dignity is void, and the Sentence remains in his Force until it be released. 3dly, and lastly, If the Party deprived within Time require by this Law an * *appeal*, (upon such Sentence of Deprivation given against him at the Court of the high Jurisdiction) such is the Nature of an Appeal that it holds (the Sentence upon which it was first brought) in *Superior* ; because in the Common Law it is said to have Effectum suspensum prioris Pronuntiati ; and therefore if it be brought upon Deprivation, it voids the Vigour thereof, and revives the former Dignity ; for such Church shall not be void until the first Sentence of Deprivation chance to be affirmed in the Appeal, and thus much of Deprivations in the Spiritual Court shall suffice at this Time. Dod. of Adv. 76, 77. Lect. 14. — * The Church is not

void

not: *perpetuo the Appeal*; for if the Sentence be reversed, he shall not be instituted and inducted again. Br. Deposition, pl. 13 cites 2 R. 2. and Fitzh. Quare Impedit 143.

If a Parson takes several Benefices In- 2. If an Incumbent be deprivable, yet the Church is not void before Deprivation. Contra. 17 E. 3. 59. b.

compatible without Licence or Plurality, this is a *Voidance in Law*, but not in *Fact*; For he ought first to be deprived by the Bishop, and then the Parson may present, and the Patron may sue for the Deprivation. Br. Quare Impedit, pl. 51. cites 11 H. 4. 37. 59. — Parson took a 2d Benefice above 8 l. per Annum, by which the first was void. But by Patron's Consent continued Possession. Per Richardson J. He cannot be any way removed till Lapse incur. Her. 116. Fowler's Case.

If a Church become void, and a Stranger enters, a Caveat with the Register of the Bishop, that none be instituted to 3. If after Caveat entered &c. a Clerk be presented, instituted and inducted, though it is not good by the Canon Law, yet the Church is still in our Law; for the Breach of the Caveat is but a Breach of the Canon, and does not make the Institution void. Rich. 15 Car. between Phipps and Hayter, per Curiam, and Prohibition granted to stay a Suit in the Arches after the Induction to avoid the Institution for this Cause.

that Church until he be made Privy thereunto, and the Bishop before that he have Notice of the Caveat institutes an Incumbent, the Institution is merely void in the Spiritual Law; for the Register ought to notify the Caveat to the Bishop; and his Negligence in that shall not prejudice him that entered the Caveat; And if the Bishop have Notice of the Caveat, and gives Day to him that puts it in, and before that Day he institutes an Incumbent, this is merely void; for the entering of a Caveat is as a Super-festas in our Law. Goldsb. 146 Hill 43 Eliz. cites it as said per Dr Amias in the Lord Zouch's Case. — Institution and Induction stand good, tho' a Caveat was entered before; and the Ecclesiastical Court cannot meddle with it. Litt. R. 165. Stephens v. Crisp.

A Caveat was entered with the Bishop not to admit without giving Notice, yet Admission is good; but if he admits one that has no Right, he is a Disturber, but otherwise the Caveat does nothing but only to make the Bishop careful what Person he admits. 2 Brownl. 119. Anon. — A Caveat is of Force for 3 Months, and any one may safely present after the End of 3 Months, as if no Caveat had been entered. Per Dr. Talbot. Cro. J. 464 Hutchings v. Glover.

The King was Patron of the Church of D and B. Incumbent. W. entered a Caveat in the Life-time of B. then, lying in Extremis, viz. Caveat Episcopus, ne quis admittatur &c. nisi Convocatus the said W. — R. dies. J. S. a Stranger presented M. who was instituted and inducted, and W. presented his Clerk, who was likewise instituted and inducted, the King likewise presented his Clerk who was instituted and inducted, and it being a Question in the Spiritual Court, which of these Clerks had the best Right; Sentence was given there, that the first Institution was void by reason of the Caveat, and then the Church being full of the 2d. Incumbent, the King was put out of Possession, and so his Presentment void. But it was resolved, 1st. That the Caveat was void, it being * entered in the Life-time of the Incumbent. 2dly, That the Church was full by Institution against all Persons but the King, and then the Presentation by W. was void, by reason of the Super-institution of the Clerk of the Stranger; and so the Presentation of the King was good. Poph. 132. Hill. 15 Jac. B. R. Morgan v. Roun. —

* S. P. per Mountague Ch. J. Cro. J. 464. Hutchings v. Glover.

4. If the Patron present one that is merely a Layman within the Act of 25, and he upon this be admitted, instituted, and inducted, and afterward a Qua. Imp. be brought against the Patron and the Incumbent, whereof Judgment is given by the Default of the Incumbent, where indeed the Incumbent was never at any time duly presented, according to the Law, by reason of which Judgment the same Incumbent is removed; if upon this afterward the said Incumbent by Sentence of the Spiritual Court be deprived in the Spiritual Court for want of Capacity in Suit there, for the Cause of his Incapacity exhibited against him, such Sentence is good, and available in the Common Law, although the said Incumbent was before removed from his Benefice by the Judgment given against him in the Qua. Imp. For though such declaratory Sentence given against him by the Spiritual Law cannot remove him that is removed already, yet it shall make this Incumbent answerable to the next Incumbent for all the mean Profits received by him that was the first Incumbent, from the time of his Induction. Yet if the first Incumbent so deprived will afterward bring a Writ of Deceit upon the Judgment given against him in the Quare Impedit by Default, because he was not summoned as aforesaid, he shall have Judgment herein, and the same Deprivation had in the mean Season in the Spiritual Court is no Impediment thereunto; for in the said Suit of De-

Deceit the Incumbency shall not be in Question, but only the Disturbance of the Plaintiff in the Quare Impedit. Dod. of Adv. 74, 75, 76. Lect. 14.

(N. b) Entry into Religion.

Fol 362.

1. If an Incumbent enters into Religion, the Church is void thereby. 11 H. 6. 60. b. 76.

It is a Rule of the Canon Law, that

Beneficium non vacat per Religionis Ingressum ante Professionem, nisi de Consensu Ingressi.

2. But otherwise where the Dispensation is after. Contra. 11 H. 4. 60.

(O. b) Lapse. What it is, and the Commencement.

1. Mich. 3. E. 1. B. Rot. 105. Staff. The Bishop of Coventry and Litchfield pleaded a Collation by Lapse Autoritate Concilii against the Prior of Landa to the Church of Darningham.

2. 6 E. 1. Rot. Patentium Membr. 25. In a Quare non Admisit by the Abbot of St. Mary Eborum against the Bishop of Norwich the Bishop made Title by Lapse, scilicet, that he collated Autoritate Concilii post Lapsum semestre, scilicet, tali Die &c. and there after in the Judgment it is said, Quia tempus semestre Autoritate Concilii non incipit versus Patronum nisi a tempore Scientiæ Mortis &c. (Quære what Council is intended) D. 9. E. 1. B. Rot. 51. it appears that Lapse was given per Concilium Lugdunense post tempus Semestre. In a Writ in the time of E. 2. cited Co. 6. Catesby 62. according.

3. Bracton. libro 4. fol. 241. Lapsus temporis de Constitutione Lateranensi.

2 Inst 27. in the Comment on the Statute de Bigamis cap. 5 takes notice of the Difference between Bracton and Briton, as to the Council whether of Lyons and Lateran, and

4. Britton. fol. 225. If the Church remains discaunfelled beyond 6 Months, then according to the Council of Lyons by the Discord of the Parties the Bishop shall be in the Place of a Counsellor, and shall give the Church to any Clerk saving every one's Right; But Master Selden, in his Book of Tithes, 390. says that the Manuscripts of Breton have for de Lions de Latt. which is without Doubt for de Lateran.

5. Selden in his Book of Tithes fol. 388. holds that Lapse was received in the Laws of England from the General Council of Lateran held in Anno 25 H. 2.

6. In Hoveden. fol. 326. there, among the Canons of the Council of Lateran held under Alexander the Third, Anno Domini 1118. in Time of King H. 2. there is such Canon, Cum vero Præbendas, Ecclesias, seu quælibet Officia in aliqua Ecclesia vacare contigerit, vel si etiam Modo vacant, non diu maneant in Suspensio, sed infra sex Menses Personis, qui digne administrare valeant, conferantur. Si autem Episcopus, ubi ad eum spectaverit, conferre distulit, per Capitulum ordinetur.

says that Fleta lib 1. cap. 32. [S. 34] mentions Lyons; He adds, That the Pope endeavoured to take away the Presentations from Princes and Lay Patrons

7. Before the said Council the Patron was not limited to any Time but might present at his Pleasure without any Lapse. Selden in his Book of Tithes 387. Bracton. lib. 4. 241.

to present by Lapse; For that the Constitution says, Quod Collatio Beneficii est Res Spiritualis & aliter Credentes essent Heretici; And the Common Law say, That a Presentation to a Benefice is temporal,

and is so declared by divers Acts of Parliament. At this Council, after 6 Months, the Diocesan shall present; The Register saith, That to present by Lapse was Diocesanis specialiter indultum after 6 Months, and yet if after the 6 Months the Patron presents before the Diocesan collate, he ought to receive his Clerk, notwithstanding the General Council; But when the King's Turn came to present Jure Coronæ by Lapse the Register saith, Nullum Tempus occurrit Regi ex Consuetudine hæcenus obtenta in Regno Angliæ, so as the Council did not bind the Right of the King, nor could the Diocesan present by Lapse, until it was ei indultum; that is, until it was allowed to him by Consent of the Realm, with such Limitations and Restrictions, and with binding him in many Cases to give notice, as was thought just and reasonable in Subjects Cases, for the better Service of God and Instruction of the People; But the King, who is Supremus Dominus, loseth not his Presentation by any Lapse at all, the said Constitution notwithstanding. — Ante Concilium Lateranense nullum curre' at Tempus contra Præsentantes, but the Bishop was to provide one to serve the Cure in the mean time, and the Patron might present when he would; but our Lapse is not according to the Times and Persons expressed in the Canons; For they give four Months to a Lay Patron, and six Months to an Ecclesiastical &c. neither hath therein the King any supreme Title by them to confer by Lapse; And by the Council Tempus Semestre is to be accounted per Dies, & non per Menses Anni; And therefore we hold, That the Time and Title to present by Lapse, is Per Legem Angliæ, occasioned and established it may be by reason of the said general Council. 2 Inst. 361. And says, see lib. 6. fol. 62. in Catesbye's Case.

8. In the Book which is in the Exchequer, whereof the Title is Transcriptum Chartarum Comitum Cornubiæ, there is a Charter 60. & 168. by which the Bishop of Norwich recites, Cum per Lapsum Temporis Autoritate Concilii de Priore præficiendo in Monasterio de Eya quod est de Patronatu Ricardi Comitum Cornubiæ hac vice ad nos devoluta sit Potestas, and least this should draw a Right to him and his Successors, they put their Seal thereto &c.

Fol. 336.

2 Inst. 361.

9. Registrum Originalium fol. 42. b. Inter Prohibitiones, Quia secundum Legem & Consuetudinem Regni nostri Angliæ Episcopi per Lapsum Temporis ante 6 Menses contere non debent &c.

10. P. 9. E. 1. B. Rot. 51. In Assise of Darrem Presentment by the Abbot of Lyra against the Archbishop of Canterbury, the Defendant says that the Church is full of his Collation Ratione Concilii Lugdunensis, and being demanded, Per quem Articulum eiusdem Concilii contulit eandem Ecclesiam, dicit quod ipse est Archiepiscopus & primas Angliæ & quod non vult nec debet ad hoc concedere in Curia ista, and because the Plaintiff Presentavit ante Lapsum Temporis semetris, & Archiepiscopus nihil dicit sed quod ipse ad Ecclesiam contulit Autoritate Concilii Lugdunensis nullam certam Rationem super eo exprimendo & sic possit omnibus de Regno Præsentationes auferre, & Consuetudo Regni Angliæ sit quod nullus Patronus debet a Præsentatione Ecclesiæ suæ excludi Autoritate Concilii, nisi negligens sit, & remissus in præsentando infra tempus semestre, ideo querens recuperet &c. and writ to the Bishop granted &c.

Watf. Comp.

Inc. Svo. 197.

cap. 12.

Lapse to the

Ordinary is

in respect of

his Episcopal Care,

but to the King is as supreme Patron,

and is the Reason that Rome did not claim it

Per Doderidge Roll. R. 464 in the Case of Colt v. Glover, cites Doctor and Student — 'Tis not an

Interest but a Trust or Administration. Per Hobart Ch. J. Roll. R. 475. in S. C.

11. A Lapse is an Act and Office of Trust reposed by Law in the Ordinary, Metropolitan, and lastly in the King to provide the Church of a Rector in default of the Patron, and yet as for him and to his Behoof. Hob. 154. Mich. 10 Jac. in the Case of Colt v. Glover.

(P. b) By what Time the Patron may present before Lapse shall incur.

Watf. Comp.

Inc. Svo.

cap. 12.

cites S. C.

BY the Common Law of England as well Clerks as Laymen shall have 6 Months to present before Lapse shall incur. Doctor and Student. 116. b.

2. By the Common Law of Scotland Laici Patroni quadrimestre seu quatuor Mensium, Ecclesiastici vero sex Mensium Spatium habent sibi concessum ad Praesentandum Personam idoneam Ecclesiae vacanti. Skene Regiam Majestatem, 10. h.
3. But 11. 6. pl. 1. cap. 7. pl. 7. cap. 102. pl. 12. cap. 119. 158 Concedit Patrono Laico Spatium sex Mensium, infra quod praesentare debet. By the Petit Customs of Normandy, the Patrons as well Laick as Ecclesiastick have six Months to present after the Death of the last Possessor. Quod vide Chapter of Patronage. S. 70.
- or Disproportion; let it suffice the Laity, That it was the Canonist's Pleasure to have it so, for Reasons best known to their own Interest; the Common Law impartially levels them both to one and the same equal Standard of six Months.

Godolph. Rep. 245. cap. 22. S. 2. S. P. cites the same Book, and says we need not inquire into the Reason of that Difference

(P. b 2) *How the Six Months shall be reckon'd.*

1. **Q**UARE Impedit against the Bishop of A. who justified for Lapse, The Plaintiff replied, That before the 6 Months ended, he presented &c. The Defendant rejoined, That the Church to which the Presentment was, is a Church with Cure of Souls, and the Parishioners there are Welchmen, and speak and understand no other Language but Welch, and that the Presentee could not speak or understand the Welch Language; For which Cause he refused him, and gave notice of the Plaintiff of the Refusal and Cause thereof; and it was agreed and resolved by the whole Court that the Computation of the 6 Months in such Cases, ought not to be according to the Kalendar January, February &c. but secundum numerum singulorum Dierum, allowing 28 Days to every Month. Le. 31. Trin. 27. Eliz. C. B. Albany v. the Bishop of St. Asaph.
- Months, and not according to 28 Days to a Month. And this Judgment was affirmed in Error. Rep. 62. Catesby's Case. — Yelv. 100. S. C. by Name of Catesby v. the Bishop of Peterborough. — Cro. J. 141. Trin. 4. Jac. S. C. — Jenk 282. pl. 282. pl. 8. cites S. C. — S. P. 2 Inst. 361, and says it was so resolved in the Time of E. 2. and in the Time of H. 8. — Verba Accipienda sunt secundum subjectam materiam, and therefore, because this Computation of Months concern those of the Church, there is great Reason that the Computation should be according to the Computation of the Church which they best know. 6 Rep. 62. Mich. 3 Jac. C. B. Catesby's Case — S. P. 2 Inst. 361.

But Mich. 3 Jac. C. B. where the Church voided by Deprivation of the Incumbent, It was adjudged that the 6 Months should be accounted according to the Kalendar six

(Q. b) *How the 6 Months shall be Reckoned. From what Time.*

1. **T**Empus Semestris Autoritate Concilii non incipit versus Patronos nisi a Tempore scientiae Mortis Personae (that is to say of the last Incumbent. 6. E. 1. Rot. Patentium Membrana. 25. Adjudged in a Writ of the Time of E. 2. cited Co. 6. Catesby. 62. accordingly, and says Per legem & Consuetudinem Regni hactenus Utilitatas.
2. As if the Incumbent dies beyond Sea, the 6 Months shall not be reckoned from the Death, but from Knowledge of the Death by the Patron. 6 E. 1. Rot. Patentium Membrana 25. between the Abbot St. Mary Eborum and the Bishop of Norwich, adjudged in a Quare non admisit.
3. The six Months shall not be reckoned from the Death of the last Incumbent, but from the Time that the Patron might by Computation per Rationabiles Dietas, having Regard to the Distance of the Place where he was at the Death of the Incumbent, if he was within the Notice

Godolph. Rep. 248. cap. 22. S. 6.

Godolph. Rep. 248. cap. 22. S. 6.

Godolph. Rep. 248. cap. 22. S. 6. — As to the Notice

in such
Case, Con-

* Fol. 364.

sideration
ought to be

had to the Distance of the Place where the Patron is. D. 327. b. Marg. pl. 7. cites S. C. Mich. 5 E. 1. Rot. 100. Lib. Record, fol. 14 Queen Eleanor v. Bishop of Lincoln.

Godolph.

Rep. 248

cap 22. S. 6.

the Realm at the Time, come to the Knowledge of the Death of the Incumbent; for he ought afterwards to take Notice at his Peril, and * not before, inasmuch as he was in other County than where the Church is, and than where the Incumbent died. 5 E. 1. 75. adjudged. *Queen Eleanor's Case. Contra Co. 9. Catesby 62. b.*

4. So a Fortiori it would be, if the Patron were over the Sea at the Time of the Death of the Incumbent. 5 E. 1. *Queen Eleanor's Case* 75. agreed.

5. Apud Scotos, by the Common Law of the Realm the Time limited for the Patron to present, is to be computed a tempore Scientiæ non autem a tempore Vacationis beneficium. *Skene Regiam Majestatem* 10. b.

6. See the Petit Customs of Normandy, Chapter of Patronage. S. 70. The 6 Months shall be counted from the Day that the Death of the last Possessor is commonly known. In the ancient Book, fol. 40. b.

7. *Registrum Originale*, fol. 42. Inter Prohibitiones. Quia secundum Legem & consuetudinem Regni nostri Angliæ Episcopi &c. Beneficia &c. vacantia per lapsum temporis ante sex Menses a tempore Vacationum eorundem transactos conferre non debent nec conferre consueverunt temporibus retroactis &c.

8. If the Ordinary refuse a Clerk because he is Criminosus, in this Case the Patron shall not have 6 Months to present after Notice given, but from the Voidance. 14 H. 7. 21. *Curia* 18 H. 7. *Kell* 50. b. *Quare*.

S. P. Per
Cur. 2 Salk.
539. Mich.
3 W. &
M. B. R.

Hele v. the Bishop of Exeter. For the Crime is as much in the Consuance of the Patron as the Bishop

Godolph.

Rep. 249.

cap 22 S. 6.

— 2 Salk.

539 says that

the Lapse shall incur from the Refusal. Per Cur. B. R. *Hele v. the Bishop of Exeter.* — * This should be 327. pl. 7.

9. If the Ordinary refuse a Clerk for Cause of Illiterature, the Patron shall not have 6 Months from the Notice thereof but from the Voidance. D. 15. 16. El. * 227. 7. *Per Curiam*.

* S. P.

Brownl. 165

Austin v the

Bishop of

London. —

Student 116. 5 E. 4. 3. b.

S. P. D. 327.

b. 71. Mich. 15 & 16 Eliz. Anon

pl. 153 cites S. C.

— S. P. Br. *Quare Impedit*, pl. 159. cites Doct. & Stud lib. 2

But upon the Death,

Creation and Cession of the Incumbent, the 6 Months shall be accounted from the Time of the Death, Creation

and Cession — S. P. Godolph. Rep. 245. cap. 22 S. 2. — S. P. By Lord Dyer, Because it may be done

secretly in the Chamber of the Ordinary; and therefore the Bishop is to give Notice thereof to the Pa-

tron. 3 Le 45. pl. 66. Mich. 15 Eliz. Anon.

10. If a Church voids by Resignation or * Deprivation, the 6 Months shall be reckoned from the Notice thereof to the Patron, and not from the Voidance. † 1 H. 7. 9. b. D. 15. 16. El. 327. 5. Dr. & Student 116. 5 E. 4. 3. b.

11. In *Quare Impedit* the Time of the Lapse shall be accounted from the Voidance, and not from the Time of the Presentation made. Per Cur. Br. *Quare Impedit*, pl. 90. cites 14 H. 7. 21.

The six

Months shall

be account-

ed from the

Institution

between

Common

Persons to

have the right

Patron of

his

12. The six Months shall be accounted from the Time of the Admission and Institution as to an Usurper, and not from the Time of the Voidance; but the Bishop as to the Lapse shall count the 6 Months from the Time of Vacation; and against a Common Person, it is full by Admission and Institution without Induction, and from the Induction the 6 Months shall be accounted there; and so where the King presents he shall account the 6 Months from the Time of Institution. Br. *Presentation*, pl. 46.

Quare Impedit by the Statute of West 2. Fin. Law 8vo. 196.

13. If

13. If the *Incumbent dies*, and the *Patron presents* another, and the *Bishop* upon Examination *finds him unable* for Literature, in this Case the Justices were of Opinion that the 6 Months should be accounted a *Tempore mortis* &c. D. 327. b. pl. 7. Mich. 15 & 16 Eliz.

S. P. Watt.
Comp Inc.
Svo. 380.
cap. 20 —
S. P. Because
the Patron

ought to present a Clerk that is qualified, otherwise his Presentation is void, and shall not prevent the *Lapse*. 4 Mod. 140. Trin. 4 W. & M. B.R. in Case of Hele v. the Bishop of Exeter

14. If an Avoidance be *caused by an Union* (for so it may be) then the 6 Months shall be computed *from the Time of the Agreement* upon that Union; for in that Case the *Patron* is not ignorant of, but *pry* to the Avoidance; for there can be no Union made, but the Patron must have the Knowledge thereof; and then it is to be appointed who shall present after the Union, as whether one or both, either jointly, or by Turns one after another, as the Agreement is upon the Union. Godolph. Rep. 245. cap. 22. S. 2.

(R. b) *Lapse. Notice.* In what Cases *Lapse* shall incur without *Notice*, and where with *Notice. Refusal* [&c.]

1. If the Ordinary refuse a Clerk, because he * is *Criminosus*, he ought to give Notice thereof to the Patron; otherwise no *Lapse* shall incur. 38 E. 3. 2.

Br. Quare
Impedit, pl.
64. cites
S. C. Per
Finch. —
S. P. Per

Billing, quod Needham conceit. Br. Quare Impedit, pl. 120. cites S. E. 4. 2 — D. 207. b. pl. 3. cites Fitzh. N. B. Tit. Quare Impedit. — * As for being a Heretick. Dal. 51. pl. 19. — Where the Ordinary, after that the Patron has presented, inquires, and finds the Clerk *Criminosus*, and the Time of *Lapse* by this passes, there he shall not make Collation by *Lapse*, but must first give Notice to the Patron if he be a *Layman*; Contra if he be a *Spiritual Man*. Note the Difference, for he may know his own *Link*. Br. Notice, pl. 6. cites 14 H. 7. 21 — Br. Quare Impedit, pl. 92. cites S. C. — S. C. Cited by Mounson J. 3 lie 4. Mich. 15 h. i. Anon. — Watt. Comp. Inc. Svo. 379. cap. 20 cites S. C. — But 2 Saik. 529. lxxx. That if the Ordinary refuse Quia *Criminosus*, he need not give Notice of his Refusal; for the Crime is as much in the Conscience of the Patron as of the Bishop. Per Cur. Mich. 3 W. & M. B. R. Hele v. the Bishop of Exeter.

2. If the Ordinary refuse a Clerk for a private Cause, as if the Clerk upon the Examination of the Ordinary confesses himself to be a Common Adulterer, or that he comes to the Presentation by Usury and the like; In this Case the Ordinary is bound to give Notice thereof to the Patron, or otherwise no *Lapse* shall incur. 18 H. 7. Kell. 50. b.

3. So Notice ought to be given of a Refusal for a Notorious Crime, as because he is a Common Adulterer, or a Common Murderer. 18 H. 7. Kell. 50. b. Contra per Frowick.

4. If a Lay Patron presents a Clerk who is refused because he is not well letter'd, no *Lapse* shall incur without Notice given to the Patron of this Refusal. 18 H. 7. Kell. 49. b.

S. P. F. N. B.
35. (V) —
But on Notice
Lapse shall
be to the

Bishop if the Patron does not present another within the 6 Months after the Church became void And 32. pl. 7. Paten. 3 Eliz. Anon. — If I present my Clerk to the Bishop, and he finds him *Not able*, and refuses him, there if he gives Notice to me, and I do not present within 6 Months, he may present by *Lapse*; but if he does not give Notice, but presents by *Lapse*, there after the 6 Months I may have Quare Impedit against him. Per Newton and Paton. Br. Quare Impedit, pl. 85. cites 22 H. 7. 25.

5. If a Spiritual Patron presents a Clerk who is refused for Default of Literature, three *Lapse* shall incur without Notice, because the Law intends, That he might have sufficient Knowledge of his Sufficiency before he presented him. 18 H. 7. Kell. 49. b.

See (F) of
pl. 1. 2

But if the first was above 8 l. the Patron must take

* Fol. 365.

6. If an Incumbent of a Church with Cure of the Value of 5 l. per Annum, takes a 2d Benefice which is not within the Statute of 31 El. tho' no Lapse shall incur to the Ordinary by this Voidance by the Canon before Notice given to the Patron, yet after Notice Lapse shall incur if he does not * present within 6 Months. Trin. 14 Car. B. R. in *Baldock's Case*, by Jones and Barkley.

Notice at his Peril; for it is void by Act of Parliament, and the Words are, That it shall be void as if the Incumbent was dead. Per Jones J. Jo. 405. S. C. — If a Man be presented to a Benefice of 6 l. per Ann. and after to another of 20 l. if he is Deprived for Plurality, the Bishop must give Notice to the Patron; for 'tis at the Common Law, and 'till Deprivation 'tis no Cession. Godb. 23. Pasch. 26. El. C. B. Where an Avoidance is by Statute no Notice need be given to the Bishop. Brownl. 16.

S. P. Br. Notice. pl. 10. cites 1 H. 7. c. — Br.

7. If a Resignation be made to the Bishop, no Lapse shall incur without Notice thereof given to the Patron. 18 H. 7. Kell. 49. b. 18 El. D. 347. 12.

Quare Impedit. pl. 117.

cites S. C. — The Patron shall take Notice of every Voidance of an Advowson, except Resignation, and of this the Ordinary shall give Notice to him. Br. Notice, pl. 27. cites Frowick's Reading, 117. — If the Avoidance of a Church is by Resignation, or such like, where the Bishop is proxy or Party to the Cause of the Avoidance &c. Notice must be given of such Avoidance to the Patron, or otherwise the Ordinary shall not take Benefit of the Lapse. D. 293. b. pl. 3. Mich. 12 & 13 Eliz. in the Case of *Bedinfield v. Pickering*. — If an Usurper presents within the 6 Months, and the Presentee is in for 6 Months, no Notice being given of the Resignation, yet that shall bind him, and he shall be put to his Right of Advowson. Secus if the Ordinary had collated, because the Induction is Notorious to the Country, and the Patron ought to take Notice of it at his Peril to prevent the Usurpation of a Stranger. Noy 63. *Servien v. Bishop of Lincoln*.

8. So if the Bishop dies who took the Resignation, yet Lapse shall not incur to his Successor without Notice given. 18 H. 7. Kell. 49. b.

In Case of Resignation and Deprivation no Lapse shall incur to the King, but after Notice given to the Patron. Jenk. 244. pl. 28.

9. So after such Resignation no Lapse shall incur to the King after a Year and a Half for Default of the Ordinary and Metropolitan; because no Lapse shall incur to the King where no Title of Lapse was to the inferior Ordinary. D. 18 El. 348. 12.

* S. P. For it is a Spiritual Act, of which the Patron is not bound to

10. Upon * Deprivation the Ordinary shall give Notice. But it is said elsewhere, that of Voidance, Cession, and Creation, the Patron shall take Notice at his Peril; and the same Law of Resignation as of Deprivation Br. Notice. pl. 24. (bis.) cites 5 E. 4. 4.

take Consensus before Notice given. Br. Quare Impedit, pl. 127, cites S. C. — The Notice of Deprivation or Resignation ought to be given by the Ordinary himself, and not by a Stranger. Br. Notice, pl. 25. cites Doct. and Stud. lib. 2. cap. 31. — If a Parson be deprived by the Ordinary, or reads not his Articles, in which Cases the Church is void, yet Notice must be given to the true Patron for the Time, [or Turn] or else the Lapse incurs not, (which is inconvenient for the Church, and a Prejudice to the Ordinary) for how shall he in this Case assure himself of a sufficient Notice; for if he give Notice to him that is not Patron for this very Turn, his Notice is vain, and the true Patron perhaps knows not of the Deprivation; or if he knows it, needs not present without Notice given him. In this Case Sir H. Hobard Ch. J. holds, That his Way is to award a *Fure Patronatus*, with solemn Premonitions Quorum Interest; and then Inquiry being made who is Patron, to give him Notice; and if he presents not within 6 Months, then the Ordinary may collate, tho' that shall not bind the very Patron, yet it shall excuse the Bishop from Disturbance upon special Matter shew'd; but if the other supposed Patron present, and the 6 Months incur, Quare if the true Patron be bound, since there was no Notice given him. And the Opinion of Hobart is, That tho' without Notice the Patron is not bound by the Lapse, yet that is nothing to save the Usurpation of another pretended Patron, who is not Subject to give Notice. Godolph. Rep. 181. cap. 16. S. 4. cites the Case of *Elvis v. the Archbishop of York*.

11. In Quare Impedit against the Bishop and his Collatee the Bishop pleaded, That A. presented J. S. to him at B. and he being getting on Horseback, commanded J. S. to attend him at N. within the same Diocese within 3 Days, that he might examine him and inquire of his Ability; but J. S. came not then nor in 6 Months after, by which he collated by Lapse Absque hoc, that the said W. L. [as the Plaintiff had counted] gave the said Manor to F. L. in Tail, Priest &c. And it was at length held, that the Ordinary shall have Time to be advis'd; for in Examination he is Judge, and not Officer;

Officer; And that the Time and Place given were convenient, and that he need not give Notice to the Patron, that J. S. came not be examin'd because he had not refus'd him. Br. Quare Impedit, pl. 91. cites 14 H.

7. 21. 15 H. 7. 6, 7, 8.

12. If the Bishop refuse a Clerk *because he is a Villein*, as he may do, Br. Notice, he shall give Notice thereof to the Patron, whether he be Lay or Spiritual. Br. Quare Impedit, pl. 92. cites 14 H. 7. 28. Per Brian and the greater Part of the Justices and Serjeants. S. C.

13. Patron presents a *mere Layman*, who is admitted and instituted, Notice must be given before Lapse shall incur. And. 16. pl. 34. Pasch. 195. pl. 234. Adjudg'd. — S. C. D. 292. b. pl. 1. Mich. 12 Eliz. Bennetfield v. Pickering.

12 & 13 Eliz. Adjudg'd. — 2 Show. 54 Per Scroggs Ch. J. Pasch. 31 Car. 2. B. R. in the Case of Hill v. Boomer. S. P.

14. 13 El. 12. Enacts that *No Lapse shall accrue 'till 6 Months after Notice of Deprivation for being under Age, Not reading the 39 Articles, or Oppugning the same, given to the Patron by the Ordinary.* Where one under the Age of 23 Years was presented to

a Benefice, the Question was, Whether the Patron should have Notice, or that Lapse otherwise shall not incur to the Bishop, which is grounded upon this Statute. And it was held clearly by Mallet, Heath, and Brampton Justices, That the Notice ought to be given, or otherwise that Lapse shall not incur. But they agreed, That if the Act had avoided the Presentation also, as well as the Admission, Institution, and Induction, that in such Case the Patron ought to have taken Notice at his Peril, being an Avoidance by Statute, if the Proviso help it not. Mar. 119. Mich. 17 Car. the Bishop of Hereford v. Okeley.

(S. b) In what Cases, and in what not, Lapse shall incur without Notice for *Collateral Cause*, where De Jure Notice ought to be.

1. **I**n such Cases where of itself no Lapse would incur without Notice, if the Ordinary who ought to give the Notice dies before Notice, yet no Lapse shall incur to the Successor without Notice. 18 H. 7. Kell. 49. b.

2. Where Notice is to be given, and none is given within a Year and a Half, by which Lapse ought to run to the King if Notice had been given, yet no Lapse shall incur to the King, because * no Lapse shall run to the King, where no Title of Lapse was to the inferior Ordinary, inasmuch as he comes to supply their Default. D. 18 El. 34 S. 12. * S. P. Hob. 154 in the Case of Colt and Glover v the Bishop of Coventry

and Litchfield. — S. P. Cro. J. 93. in the Case of Lancaster v. Lowe.

3. If Notice ought De Jure to be given, the Temporalities of the Ordinary being in the Hands of the King, yet it seems that no Lapse shall run to the King without Notice to the Patron; for it seems that the Guardians of the Spiritualities ought to give Notice. D. 22 El. 369. 54. will prove this. Warf Comp. Inc. Svo 52. cap. 4.

(T. b)

(T. b) *What shall be sufficient Notice where it is requisite.*

* S. P. 2.
Sall. 539. in
the Case of
Hole v. the
Bishop of
Exon. —
The Bishop
refused a

1. **I F an Ordinary refuse a Clerk for Illiterature, and notifies it to the Patron by Publick Intimation fix'd on the Door of the Church to which the Clerk was presented, it is not good without Notice * to the Person of the Patron. D. 16 El. 327. 7. Adjudg'd.**

2. **But where the Patron cannot be found, peradventure such publick Intimation shall be sufficient. D. 16. El. 327. 7.**

Clerk, because the *Sentence to be read* in the Church, to which the Presentment was, *must be in the Welsh Language*, and the *Presentee could not speak Welsh*, and that the *Parishioners understood not the English*, and therefore he refused him; And all the Justices held this a good Cause of Refusal, for he cannot instruct himself according to his Duty and Charge; but in this Case the *Plaintiff had presented 16 Days within the 6 Months*, and the Bishop gave *no Notice* of the Inability of the Clerk, *till 3 Days after the 6 Months expired*; And the Court held that notice ought to be given to the Patron himself, if he be resident in the County, and if not, a publick Intimation ought to be on the Church Door, and notice of this Matter ought to have been given immediately, when he was presented and examined, or within such convenient Speed as might be; But when the Bishop is to enquire of the Behaviour of the Clerk, he shall have longer Time; And for this Cause Judgment was given for the Plaintiff Cro. Eliz. 119. Mich. 30 & 31. H. 8. R. Allen v. Bp. of St Asaph. — Le. 31. pl. 39. S. C. And Anderson said, that 22 Days between the Presentment and the Notice was too large a Delay, and the Defendant has not shewn in his Plea any Cause for the Justifying or Excuse of it, and therefore upon his own Shewing we adjudged him a Disturber. — S. P. Carth. 312. in the Case of the Bishop of Exeter v. Hole, where not giving notice till 32 Days after Refusal was intited to be too long a Delay, and to amount to a Disturbance Ipso Facto, because in such Case the Bishop is bound to give notice to the Patron with all possible Speed. But the Court gave no Opinion in this Point.

3. *The 6 Months shall be accounted upon the Death, Creation, and Cession of the Incumbent, from the Time of the Death, Creation and Cession; But upon Resignation or Deprivation, it shall be accounted from the Time of the Act so given by the Bishop; and if another Bishop gives Notice this is void as it seems. Er. Quare Impedit, pl. 159. cites Decr. & Stud. lib. 2. But see F. N. B. that Notice of Resignation shall be given by the Bishop, where he intends to present by Lapse, Quod vide ibid. fol. 35.*

The Statute
provides,
that Lapse
shall not ac-
cure without
Notice, and
therefore
tho' the Pa-
tron made no
Presentation
within two
Years after
Deprivation
of this Pre-
sentee, for
Not sub-
scribing the
Articles, yet
no Advan-
tage can be
taken of
Lapse a-
gainst the
Patron. And
62 pl. 136.
The Queen

4. In Quare Impedit &c. the Bishop, as Ordinary, entitled himself to present by Lapse, by reason of a Deprivation, for *not subscribing the 39 Articles*, and on Issue taken, If notice of the Deprivation was given by the Ordinary to the Patron, it was found that the *Bishop notified in the Church*, the not subscribing *by a certain Intimation sealed by him, viz. R. Episcopus C. Universis Rectoribus, Vicariis, Curatis, non Curatis, Clericis & Literatis quibuscunque infra Diocesim nostram C. Salutem. Cam R. T. &c. non subscripsit &c. juxta Statut. &c.* commanding them all, and especially the Curate of C. to declare in the said Church of C. the said Non-subscribing &c. This, tho' found to have been *publicly read in English in the Pulpit of the Church &c. and afterwards fixed at the Church Door*, was held by all the Justices in Cam. Scacc. except Harper and Mounson, Absente Gawdy, to be insufficient to prejudice the Patron, because it is upon a *Penal Statute* to the Incumbent, and also to the Patron, to make him lose his Presentment, and therefore such Notice to the Patron *ought to have been Personal*, and the Intimation ought to have notified, that the Ordinary had deprived him by declaratory Sentence for his Not attending and subscribing to the Articles according to the Statute; For otherwise it shall be intended, that the Ordinary is contented to permit him &c. D. 346. pl. 7, 8. Hill. 18 Eliz. Bacon v. the Bishop of Carlisle & Witton.

v. the Bishop of Lincoln and Cock. — S. P. D. 369. b. pl. 54. Pasch. 22 Eliz. seems to be S. C. and that it seemed to the Court, that the Queen should not present by Lapse, though the Patron had notice of himself of the Not Reading of the Articles by his Presentee, notice not having been given by the Ordinary.

5. If *A. a Spiritual Man has the Presentation, and B. a Layman the Nomination*, the Presentation shall be made only in A's Name, that hath the Presentation, and not in B's Name that hath the Nomination; therefore, if the Ordinary should *refuse the Clerk for Disability*, notice shall be given only by him, to him that hath the Presentation, and not to him that hath the Nomination. Dod. of Adv. 66. Lect. 12.

(U. b) *In what Cases Lapse shall incur to the Ordinary.* See (B. c. 2) pl. 5

1. **I**F the Church be litigious between two Patrons, and the one brings his Quare Impedit, or Assize of Darrein, Presentment against the other, without naming of the Bishop, and recovers against him, if the 6 Months be passed pending the Writ, Lapse shall incur to the Bishop; For no Default was in the Bishop. 1 E. 1. Rot. Patentium. B. 15. 6 E. 1. Rot. Patentium Henr. 25. between the Abbot Saint Mary Eborum, and the Bishop of Norwich admitted. 33 E. 3. Quare Impedit 194.

In a Quare Impedit, if the Ordinary be not named, he may present by Lapse, if the 6 Months may Pendente Breve.

But being named he cannot take Advantage of any Lapse, but ought to see that the Cure be served, by Allowance out of the Profits to be taken by Sequestration, and as he can take no Advantage of the Lapse, so neither can the Metropolitan, or the King; For no Lapse being against the Ordinary, there cannot be any Lapse against them, and one Duke's Case, was cited by Coke to have been so adjudged. Cro. J. 95. in the Case of Lancaster v Low.—Jenk 281. pl. 7.

If two present severally, there shall be awarded two Commissions De Jure Patronatus; And if the one be second Patron by the one, and the other by the other, there the Church is litigious, and if their Titles are not discussed within the 6 Months, the Bishop may present by Lapse. Br. Quare Impedit. pl. 5. cites 21 H. 6. 44.

2. But if the Bishop refuses my Clerk without Cause, and after the Church * becomes litigious, no Lapse shall incur to the Bishop; For this comes by his own Act. 5 E. 1. 75. Queen Eleanor's Case. 33 E. 3. Quare Impedit 194.

* Pol 270

3. In a Quare Impedit against a Disturber, the Bishop not being named in the Writ, if the Plaintiff recovers within the 6 Months, yet if the 6 Months incur before the Writ to the Bishop taken out the Lapse shall incur to the Ordinary. 17 E. 3. 75. Fitzh. Na. 48. b. 5 E. 1. 75. Admitted.

Where a Man recovers in Quare Impedit after 6 Months, and the Church remains

void, when Writ to the Bishop comes to him he ought to receive his Clerk. Per Hill quod nullus negavit. Contra, where he had made Collation by Lapse before. Br. Quare Impedit. pl. 53. cites 11 H. 4. 8.

If a Man brings Quare Impedit, and 6 Months pass before Recovery, and after he recovers, He cannot have Execution by Force of his Recovery, and yet the Law adjudges this Allowance in him, and Writ of Right of Advowson shall be brought against him that recovers, and yet he shall have full Execution. Kelw 177. pl. 28.

4. So if after the Recovery within the 6 Months the Defendant brings Writ of Error, and the 6 Months pass Pending it, Lapse shall incur to the Ordinary. 17 E. 3. 75.

5. If the Bishop be a Disturber, no Lapse shall run by his Disturbance, though the Church be void by 6 Months. Cr. 3. Ja. B. R. between Palmer and Smith. Resolved per Curiam.

6. As if the Patron presents to the Bishop, and he will not examine the Clerk, but delays him, by which the 6 Months pass, yet no Lapse shall run to the Bishop; Because he is a Disturber, and this comes by his own Disturbance. Cr. 3. Ja. B. R. between Palmer and Smith. Resolved per Curiam.

7. Lapse may be of a Vicarage appendant to a Prebend, Br. Presentation, pl. 26. cites 24 E. 3. 26.

8. Of a *Chantery*, which has not Cure, the Ordinary shall *not* have Advantage of Lapse, *unless* it be *expressed in the Foundation*. Br. Quare Impedit. pl. 131. cites 13 E. 4. 3.

9. If a mere *Layman* be presented and instituted, and no Sentence of Nullity or Deprivation given, the Ordinary cannot collate by Lapse. Fin. Law. 8vo. 89.

10. If in a Quare Impedit against the Ordinary, he *confesses the Disturbance*, he cannot afterwards have Lapse. Br. Quare Impedit. 103. cites 39. E. 3. 15.

11. No Lapse can be after *Institution*, tho' there be no Induction. Per Popham Ch. J. Goldsb. 164. in the Case of Robins v. Prince.

(X. b) Lapse. In what Cases it shall be *prevented by the Naming of him in a Writ.*

See (U. b.)
pl. 1. in No-
tis.

Hob. 197.
pl. 250
Mich. 15
Jac. Brick-
head v.
Archbishop
of York.—
And there,
pag. 201.

1. **IF** a Church becomes void by the Death of the Incumbent or otherwise, and the Patron within the 6 Months brings a Quare Impedit against the Bishop, and after 6 Months pass without any Presentation by the Patron to the Bishop, Lapse shall incur to the Bishop, notwithstanding the Dependancy of the Writ; for it is not Reason that the Ordinary should lose his Title of Lapse without any Tort done by him, by a fraudulent Action of the Patron without Cause, by which the Ordinary shall be put to Expences without Cause; and by such fraudulent Means the Patron may keep the Church perpetually void. Hobart's Reports 270.

Hobart Ch. J. puts another Case, viz. If a Church becomes void, and *A* the true Patron presents a Clerk, and likewise *F* *S.* a Stranger, who has no Right, presents another, In this Case the Bishop, tho' he may receive either of them at his Peril, yet receives neither (as he may lawfully do) till the Right be inquir'd, without doing himself any Act of Disturbance; in this Case if *A* brings his Quare Impedit against *B.* only, the Bishop may collate by Lapse without Question. But in that Case, if *A.* names the Ordinary a Defendant, together with the Disturber, and then the Bishop comes and pleads that he claims nothing but as Ordinary &c. and then the Plaintiff hath a Writ to the Bishop with a Cesset Executio &c. and then recovers against the Disturber, and the Bishop in the mean Time collates by Lapse; in that Case perhaps the Bishop's Clerk may be removed, for it differs much from the former Case, for here was a true and not a feigned Disturbance, whereunto the Ordinary gave Way so far, that the Plaintiff could not get his Clerk Impedit, and the Time had incurr'd, the Bishop might have presented to Lapse remediless; and therefore since he did his Endeavour to present, and was interrupted by a Stranger, and the Ordinary also refused his Clerk, for which he had rather have an Excuse than a Justification, and now both being made Defendants, and the Plaintiff's Title is proved against them both, as if it had been so from the Beginning, it should be hard that the Bishop should make Advantage of this Refusal, which now appears to have been against Right and [he] the Party to the Suit. Hob 201 Mich. 15 Jac. Brickhead v. Archbishop of York — Ibid. in Marg. there is the following Note, (viz. That it is not so much the Presentation of the Disturber, as the Bishop's Refusal of the Patron's Clerk that presents, which intitles him to the Quare Impedit; and therefore it is enough for a Bishop to escape the Charge of a Disturber, and not also to make Advantage of a Lapse caused by himself.—If Quare Impedit is brought against the Bishop without any Presentation made to him, or without naming any Disturber with him, or where no Disturbance was made, in this Case tho' the Bishop was Party to the Quare Impedit, yet he shan't lose his Lapse; for Fiction shall not take away Right. Jenk. 281. pl. 7.

2. If a Man recovers against J. S. in a Quare Impedit within the six Months, and Defendant brings Writ of Error, and Plaintiff sues a Quare Incumbravit against the Bishop, and after the 6 Months pass, yet no Lapse shall incur to the Ordinary; for the Quare Incumbravit shall prevent it. 17 E. 3. 75.

3. If a Man brings a Quare Impedit against Patron, Ordinary and Incumbent, and the Ordinary pleads that he claims nothing but as Ordinary, and after the Plaintiff recovers, and the Patron and Incumbent bring Writ of Error in B. R. pending which the Bishop dies, and another is made Bishop, and after the Incumbent takes a 2d Benefice, by which

which the first is void by the Statute of Pluralities, 6 Months pass, and after the Judgment is affirm'd, no Lapse shall incur to the Ordinary. *Pl. 3 Ja. B. R. between James and Bolton adjudged, this Matter being returned by the new Bishop upon the Writ to the Bishop to him directed.*

4. A Church is void for a Year, where a *Quare Impedit* was brought within six Months against a Bishop and a Disturber; neither the Metropolitan nor the King shall have any Lapse; for the Bishop being made a Party, has no Lapse; and where the Bishop shall not have a Lapse, neither the Metropolitan nor the King shall have it. *Jenk. 281. pl. 7. cites 1 Inst. 344. b.*

(Y. b) *Against what Person being Patron, Lapse shall incur.*

Fol 367.

1. **I**f an Infant Patron does not present within six Months, Lapse shall incur. *33 E. 3. Quare Impedit 46.*

Watf. Comp. Inc. Svo. 186. cap. 12. cites S. C. F. N. B. 34 (T) S. P.

2. So Lapse shall incur against a Feme Covert, if she does not present within six Months. *33 E. 3. Quare Impedit. 46.*

3. 17 E. 2. 8. Enacts that Lapse for six Months shall not prejudice the King's Presentation to a Church.

If the King permits a Lapse, the

Ordinary cannot present by Lapse, but sequester the Profits, and find the Cure till the King will present. *Br. Quare Impedit, pl. 90. cites 14 H. 7. 21.*

4. If the King has Presentation in any other Right than in Right of the Crown, Lapse shall incur against him as well as against any other Person. But Brooke says *Quare Legem inde*, because it seems Not. *Br. Presentation, pl. 56. cites the Register, fol 31.*

Br. Quare Impedit, pl. 151. cites S. C. and Anno 8 E. 3.

5. Where the King's Tenant grants *Proximum Præsentationem*, and dies; this shall hold Place against the King, and the Bishop may present by Lapse upon the King before Office found; but when Office is found, the King shall have the Presentment, and the Incumbent shall be removed. *Br. Presentation, pl. 24. cites 14 H. 7. 21.*

(Z. b) Lapse. To whom it shall accrue [for a Collateral Respect.]

1. **I**f a Metropolitan Archbishop visits an inferior Bishop, and inhibits him during the Visitation as usual, and after during the Visitation and Inhibition, and before any Release made by the Archbishop, a Lapse incurs to the Ordinary; tho' the Acts of Jurisdiction of the Ordinary are suspended during the Visitation, so that he cannot institute his Clerk, yet he shall have Benefit of the Lapse and not the Archbishop, but he shall collate to the Archbishop, and he ought to institute his Clerk. *Trin. 13 Car. B. R. between Dodson and Lynn. Agreed by the Civilians in their Arguments.*

Watf. Comp. Inc. Svo. 194. cap. 12. cites S. C.

2. If a Bishop dies, by which the Temporalities are in the Hands of the King, if during this Time *Tempus Semestre* passes, by which a Lapse happens, the King shall have it, and not the Guardian of the Spiritualities. *Bracton, lib. 5. fol. 404. S. 10. where in his Writ it*

If the Lapse incur, and then the Ordinary dies, the King

the present, is said, Cum vobis & universis de Regno Nostro Notorium sit, & est debet, quod Ecclesie vacantes & pertinentes ad Collationem Episcoporum Abbatum & Priorum Sede non vacante dum viverent, pertinere debent ad nos Ratione Custodiae tempore Vacationis. (But it seems this intends voidances, to which they have Right as Patrons.

Hob. 154 cites F. N. B. 34 (G) 25 E. 3. 24.—The Master and Fellows of Merton College in Oxford, were Patrons of a Benefice within the Bishoprick of Durham; the Incumbent died; the Church remained void for 6 Months and more. The Bishop was deprived. It was a Question before the Church of England, Whether the Collation belonged to the King or to the Archbishop of York, who was the Metropolitan or not. Quere. D. 87. b. pl. 103.—Ibid Marg. cites 18 Eliz. as awarding that it belonged to the Guardian of the Spiritualities; and says it seems to be, because it comes by Reason of the Spiritualities; And says Quere if the Patron may now present, inasmuch as living the Bishop he might, notwithstanding the Lapse, present at any Time before the Collation.

3. If the Patron presents, and his Clerk is Instituted, and remains without Induction 18 Months, no Lapse shall incur to the King; for the King cannot have a Lapse but where the Ordinary might have had it held. Hobart's Reports 208.

Hob. 154. Mich. 10 Jac. in Case of Colt and Glover v the Bishop of Coventry and Lichfield. Cites 5 Rep 52. a.—Watf. Comp. Inc. Svo. 196. cap. 12. cites S. C.—* S. P. Co Lit. 344. b.

4. If the Patron does not present within 6 Months, the Ordinary shall have other 6 Months, and if he does not present within this, the Metropolitan shall have other 6 Months, as it is said; and if they do not make Collation within this 6 Months, the King shall have it, as it is said. Br. Quare Impedit, pl. 53.

5. If a Lapse devolves to the Ordinary, and within these Months he is translated to another Bishoprick, Per Noy Attorney General, In Default of the Patron's presenting the Warden of the Spiritualities shall present, whosoever he be. Noy 69. Anon. Cites D. 87. pl. 103.

Watf. Comp. Inc. Svo. 195. cap. 12. cites S. C.

(A. c) Lapse. In what Cases after Lapse incur'd it shall be taken away.

* Br Quare Impedit, pl. 53. cites S. C.—
S. P. Br. Quare Impedit, pl. 121. cites 13 E. 4. 3.—† Br. Presentation, pl. 51. cites S. C.—Br. Quare Impedit, pl. 64. cites S. C.—If the Patron does not present within 6 Months, the Ordinary may make Collation within other 6 Months; and if he fails, the Metropolitan within other 6 Months, and in Default of him the King; but during all this Time, if the Patron presents, the Church being void and the Lapse not taken, the Ordinary ought to admit his Clerk. Br. Presentation, pl. 58.—S. P. Tho' it be two Years after the Avoidance Brooke says, and from hence it seems, that as long as the Church is void, the Patron who is disturb'd shall have Quare Impedit; for Plerarty is no Plea, unless it be by 6 Months before the Writ purchas'd, as to him who pretends to be Patron; but where the Bishop or Metropolitan makes Collation by Lapse, the Plerarty by one Day before the Presentation of the Patron, is a good Plea. Br. Plerarty, pl. 15 cites Doct. & Stud. lib. 2. 94. S. C.—Lapse incur'd to the King, and yet the Clerk of the right Patron is Admitted, Instituted and Inducted by the Metropolitan, whether this prejudices the King? D. 277. pl. 55. Trin. 10 Eliz. Anon.—† Hob. 152. 166.

2. But if the Ordinary collates by Lapse, and after and before Induction the * Patron presents, the Ordinary is not bound to receive him. D. 10 El. 277. 56.

* Fol. 368.

3. If pending a Quare Impedit Lapse incurs to the Ordinary who is not named in the Writ, and the Plaintiff has Writ to the Bishop, at which time the Church is not full, yet if the Ordinary collates before the Receipt of the Writ, his Clerk shall not be removed. 11 D. 4. 80.

Br. Quare Impedit, pl. 53. cites S. C.

4. If Lapse incurs to the Inferior Ordinary, and within his 6 Months after the Superior Ordinary collates, by which the Church is full, yet if the Patron presents his Clerk within those 6 Months, he ought to be received; For the Collation of the Metropolitan is tortious, and a Collation shall not put the Party to a Quare Impedit, and therefore this tortious Collation against the Patron is, as if no Collation had been. Dubitatur. 11 D. 4. 80. where it is objected, that the Tort is between the Ordinary and the Metropolitan, and not to the Patron.

Br. Quare Impedit, pl. 53. cites S. C. — Watt's Comp. Inc. 8vo. 198. cap. 12. cites S. C.

5. If the Ordinary collates within the 6 Months, and after 6 Months pass, yet the Patron may present before a new Collation by the Ordinary; for the first Collation was by Tort, and therefore cannot become Rightful; and the first does not put the Patron to his Quare Impedit, because it was but a Provision for the Time, and therefore there ought to be a New Act before it shall be a good Collation.

6. If the Ordinary collates, and his Clerk is instituted and inducted within the 6 Months of the Lapse incurred to the Metropolitan, and after his 6 Months which he himself had are passed; though this Collation be tortious to the Metropolitan, yet it seems, that this shall take away the Presentation of the Patron so that he shall not present. Summer Vacation at the Assizes in the County of Somerset, between Sir Francis Popham Plaintiff, and the Bishop of Bath and Wells and his Son Defendants in a Quare Impedit this was a Question, but so held by the Lord Finch, the Judge of the Assizes; for there was a Right of Collation. And though his Time was passed, yet this rests only between him and the Metropolitan, and an Usurpation only to the Metropolitan.

Watt's Comp. Inc. 8vo. cap. 12. c. S. C. — It is first 6 Months are passed, so that the Title to present is determined to the Archbishop, or to the King if the Bishop collates through the

Right be passed, and his Incumbent be in, the Patron by Quare Impedit shall not remove him; because his Possession is not taken away; for the Collation does not toll the Possession of a Patron, as a Presentation shall do, for by this the Wrong is done to the Metropolitan or the King, and not to the Patron. As if the Archbishop presents within the 6 Months to the Bishop in the Place of the Bishop, the Patron shall not have Quare Impedit thereupon, because the Church is full by one who does it. *Five Episcopalis* as Officer, and by Colour of this; but if any Stranger who has no Colour presents, it is otherwise; for by this the shall be put out of Possession; Per Dyer and Walshe J. but Weston and the other-jeants contra in both Cases; for by presenting an Auter Temps they are Disturbers as any Stranger. Dal. 59. pl. 9. 6 Eliz. Anon.

The Archbishop has a Title to collate by Lapse; the Bishop collates before him, this shall bind the Archbishop; for at Common Law when a Clerk was once admitted, he was not removeable; and Collation remains at Common Law. West. 2. helps only in Case of Presentation. Jenk. 281. pl. 7.

(B. c) Lapse to the King. [In what Cases; And in what Cases taken away.]

1. **V**IDE in Case of the King when Lapse may be taken away Stamford's Prerogative, title Advowson.

If the King has Title to present by

Lapse, or by Outlawry, or Wardship, and does not present in his Turn, he shall lose it. King v. Bishop of Winton and Campion.

it. Cro. J. 54.

The Patron's Title continues against the Ordinary and the King till

the Lapse is executed. Hob 152. in Case of Colt v. Glover.——But Doderidge J. said, That the Patron cannot present against the King, because he has the Lapse not as Ordinary, but as Patron. Mo 900. in Case of Colt v. Glover.——Though the 6 Months pass, yet if the Patron presents, the Bishop ought to admit, though it be after Title devolved to the Metropolitan; and this the Court held clearly; And they thought it seemed reasonable also, that he ought to admit though Title by Lapse be accrued to the King; For he claims it as Supreme Ordinary. Hutt. 24. in Case of Booton v. Bishop of Rochester.——Watf. Comp. Inc. 8vo. 1758. cap. 12. cites S. C.—Palm. 311. Mich. 20 Jac. B. R. it was resolved in the Case of Thornton v. Sabil, that the Presentation of the King by Lapse is as supreme Patron, and not as supreme Ordinary, and the King is never said to collate.——S. P. Cro. J. 651. in S. C. by Name of Sir George Savile v. Thornton.

S. C. cited Roll. R. 460. in Case of Colt v. Glover.——Mo. 260. cites it as so

adjudged in the Case of Rirdleton v. Thornwell.——D. 277. Marg. pl. 55. S. P.——Gibb. 37. in the House of Peers The King v. the Archbishop of Armagh and Whaley.

The Queen had a Title to present by Lapse, but before she presented a Clerk, the Patron presented E. who was admitted, instituted and inducted, and died. The Queen has lost her Presentation, because she had Unum & Unicam Præsentationem hac Vice, which cannot extend to the second Avoidance, otherwise she may suffer one or more Strangers to present, and take her Turn when she please; and the Statute de Prærogativa Regis, which enacts, that Nullum Tempus occurrit Regi, must be intended when the King has an Interest permanent and certain, and not when it is specially limited when and how he shall take and not otherwise; For the Time is the Substance of his Title; and in such Case Tempus Occurrit Regi. 7 Rep. 28. Trin. 2^d Eliz. Baskervills Case.——Ibid. says the same was adjudged, Pasch. 28 Eliz. C. B. between Beverley and Cornwall.——S. P. Mo 269. Beverley v. Cornwall.——And, 148 S. C.——S. P. Arg Show 425.

If the Dean of the King's free Chapel does not give the Prebends within six Months, the

King shall give them. Br. Prerogative, pl. 129. cites F. N. B. fol. 33.——And if the Temporalities of a Bishop are in the Hands of the King, and Advowson becomes void, and the Bishop and Patron do not present within 6 Months, the King shall present as the Bishop should do if there was a Bishop there. Ibid.——Br. Quare Impedit, pl. 156. cites F. N. B. fol. 34. S. C.

If the King has a Title to present by Lapse, and the Patron presents, yet the King may present at any Time as long as that Pre-sentee is Incumbent Cro. J. 216. Hill. 6 Jac. B. R. Cumber v. the Bishop of Chichester and Groen.

2. If Lapse comes to the King for Default of the Ordinary and Metropolitan, if the Patron presents to the King before any Person is presented by him, yet the King is not bound to receive him; For the Presentation being once settled in the King, shall not be defeated. Dubitatur. D. 10 El. 277. 55.

3. After a Lapse incurred to the King for Default of the Ordinary and Metropolitan, if the Patron presents, and his Clerk is inducted, yet this shall not toll the Lapse from the King, but he may remove him by Quare Impedit. Co. 7. Baskervill 28. Admitted. 27 E. 3. 85. Adjudged. Dubitatur. D. 277. 55.

4. If Lapse comes to the King to present a Prebendary of his free Chapel, because the Dean thereof does not collate thereto within 6 Months, and after before the King presents the Dean collates, yet the King shall have it, and shall remove the Clerk. 27 E. 3. 84. b. Adjudged.

5. If a Lapse incurs to the King for Default of the Ordinary and Metropolitan, and after the Ordinary collates, and his Clerk is instituted and inducted, the which Clerk so dies seised of the Church, it seems the King may present, for the Lapse devolved to him; For it seems the Church was never full, neither against the Patron nor against the King, in as much as the Collation of the Ordinary gains no Possession against the King, but the King might have presented without being put to his Quare Impedit; and it seems that the Church was not full against the Patron. (But Quare this.)

6. When the Queen's Presentee by Lapse has lost the Incumbency by ill pleading, which he may do as well as by Resignation or Deprivation, yet the same shall not turn to the Advantage of the Queen; For where the Queen presents for Lapse, and her Clerk is instituted and inducted, she has no more to do, but the Incumbent must shift as well as he can for the holding of it; For by what Manner soever he loses his Incumbency, the

the Queen shall not present again. Otherwise if the Queen be Patron. Le. 194. Mich. 31 & 32 Eliz. C. B. Arundel v. Rp. of Gloucester and Chaffin.

7. Quare Impedit; the Case was, after Lapse incurred to the Queen the Bishop being Patron presented, and afterwards the Successor of the Bishop certified, that this Incumbent had refused to pay the Tenths, and that the Bishop collated the Defendant who was inducted; the Queen brought a Quare Impedit, and it was adjudged, that the Queen had not lost her Presentation, but if the Incumbent had died it were otherwise; for here the Church became void by the Incumbent's own Act; so if he had resigned or been deprived; and it would be inconvenient if the Queen should lose her Presentment by the Incumbent's own Act. Cro. Eliz. 119, 120. Mich. 30 & 31 Eliz. B. R. the Queen v. the Bishop of Lincoln and Ligh.

Mo 259. pl. 406. S. C. thus, The Bishop being Patron and Ordinary collated D. In 8 Eliz. D. took another Benefice without Qualification, whereby the first avoided; but

nothing was done thereupon till 18 Eliz. when C. Bishop of Lincoln presented again one E. but Non Contat, whether by Death, Avoidance, or Resignation. Afterwards E. being in, C. was removed to Winchester. F. the Successor Bishop certified, that E. did not pay the Tenths, whereby the Church avoided, and thereupon F. collated Lee. The Question was, If the Queen might now remove Lee, and so have her Presentment which accrued by Lapse upon Avoidance of D. who took another benefice without Plurality [Qualification]? In arguing this Case, the Case of Rindleton v. Thornthwell was agreed, That if Lapse is devolved to the Queen, and a Stranger presents, and the Incumbent dies, the Queen shall not take the next Presentation; But some said, there was a Difference if the Incumbent * resigns, because Resignation may be by Covin to defraud the Queen, As if Lapse accrues to the Queen, and then the Patron presents by Covin, that the Incumbent shall resign, and so Presentment shall accrue to the Patron upon a new Avoidance, and the Queen be barred of her old Lapse, which is not reasonable. Others said, That in such Case the Covin ought to be averred; But they agreed, That no Covin is intendable upon this Certificate; because it is a Judicial Act, which the Bishop must make by Command of an Act of Parliament, as of Deprivation, which he must do by the Laws of the Church as Judge. And the Justices inclined against the Queen. Notwithstanding which, it was afterwards adjudged for the Queen against the Bishop. — S. C. Goldsb. 53 pl. 3. 8. pl. 10. 83 pl. 4. and 86. pl. 9. Judgment was given for the Queen. — Ow. 89 90. S. C. adjudged for the Queen — 4 Le. 95. pl. 195. S. C. adjudged. — * In the Case of Cumber v. the Bishop of Chester and Green. Cro. J. 216. pl. 2. Hill. 6 Jac. B. R. It was held, that by Death or Resignation before the King in such Case has presented, his Presentment was lost, unless it be by Covin to take away his Title, in which Case he shall have his Presentment. But that if the Parson dies, or resigns the first Benefice, and the Patron presents, and this Presentee resigns upon Covin or dies, the King has lost that Presentment; for Lapse is but Unica Proxima Vice.

8. P. was Tenant for Life of an Advowson, Remainder in Fee to A. — P. presented his Clerk, who was admitted, instituted and inducted; but by the Statute 13 Eliz. the Benefice was void for want of reading the 39 Articles; however, he continued in the Church, and by Reputation was Parson during his Life; Afterwards P. died, and then the Incumbent died; then the Queen reciting her Title to present by Lapse, presented her Clerk, who was admitted, instituted and inducted; and A. presented his Clerk who was admitted &c. No Notice was ever given to P. of the Avoidance for Not Reading &c. Adjudged, that the Queen's Presentation was void, and that the other was good, though it was objected, that it belonged to the Executors of P. because as to P. himself, the Church was full till Notice. Yelv. 7. Trin. 44 Eliz. B. R. Grendit v. Baker.

9. If a Church becomes void by Acceptance of a 2d. Benefice with Cure, Jo 334. S. and continues void several Years by Lapse in the Time of one King, who dies, the Successor of the King may present, and is not restrained by the C. — Her. 124 S. C. — Statute 25 E. 3. 1. For by the express Words of the Statute, All Rights and Titles to present in his own Time until before this Statute, and in his Time after, and all his Heirs, after the Death of E. 3 are saved; And it shall not bar the Titles which the King had in another's Right fallen, Litt. Rep. 238. 302. S. C. or to fall in his own Time, or in the Time of his Heirs; And that there was such a Saving appeared by the Copy out of the Parliament Roll, and by an ancient Book in the Exchequer wrote in Parchment, which has such a Saving; Per all the Justices and Barons besides Vernon. And they held, that the Words in the said Statute (of old Titles) is intended in the Time of the Progenitors of E. 3. and not of any Titles

of Presentments to fall in the time of E. 3. or of any of his Heirs, but intended to exclude E. 3. and all his Heirs from Titles of Presentation in others Right fallen before the Time of E. 3. whereof any Church was full, and which Title is only in Another's Right; and that the *express Intent of that Statute was to take away the Statute of 14 E. 3. cap. 2. in this Point.* Cro. C. 354. Hill. 9 Car. in Cam. Seacc. The King v. Pryst and the Archbishop of Canterbury.

(B. c. 2) In what Cases Lapse shall be to the King or Others; and what may be done after.

1. **V**IDE many Precedents, that by Determination of *Commendams Retinere*, be it by *Death, Resignation, Translation, or Promotion*, it belongs to the King to present. Noy. 138. — And it is said there, that there are infinite Numbers of such Precedents.

2. In the Time of H. 3. there were in Com. Northampt. 2 *Rectories*, sc. Maidwell and Kelmarsh, whereof there were 2 *Patrons*; Afterwards the Patron of M. in the Time of H. 3. purchased the Advowson of K. and always after they were come into one Hand the Purchaser presented only to the Church of M. *cum Capella de K.* it as appears by the Bishop's Register. The Queen presented B. who brought Bill in the Exchequer against the Incumbent of Maidwell, who occupied the Glebe of K. 'Twas decreed for B. that tho' the Patron of M. after his Purchase had presented only to Maidwell, yet K. remain'd a Church in Right, and the Franktenement is in Suspence and not in the Patron of M. as a Disseisor. For Entry of the Patron in the Time of Vacation is no Tort nor gains any Franktenement. Per tot. Cur. Savil 17. pl. 46. Pasch. 22 Eliz. Lewis v. Predreth.

3. If after Alienation in *Mortmain* the Church voids, and the Abbot presents and 6 Months pass, the Lord at any Time within the Year may remove the Incumbent; for the Act of Parliament gives all this Time to the Lord to enter, and therefore when he pursues the Statute no Laches shall be imputed to him. D. 25. b. Marg. cites it adjudg'd. Mich. 19. Jac. C. B.

4. When a Lapse is in the King he is not compellable to present, and 'till he presents the Ordinary has the Cure *De Animis*, and he shall provide for it; so the Difference is between the *Cura Animarum* and the *Patronage*. Per Doderidge J. Roll. R. 464. Trin. 14 Jac. in Cam-Seacc. in the Case of Colt v. Glover.

5. The King can't grant over a Presentation which he has by Lapse. Per Croke J. Roll. R. 467. in the Case of Colt v. Glover, cites D. 18 Eliz. 339. and 4 Eliz.

(B. c. 3) Pleadings in Case of Lapse.

In Quare Impedit against W. and N. by the King, and counted that

1. 25 E. 3. Stat. 3. **E**NACTS that when the Ordinary presents by Lapse, cap. 7. and the King takes the Suit against the Patron, who in Deceit suffers the King to recover; In this Case, when the King's Right is not tried, the Ordinary or Incumbent may counterplead the King's Title. T. was seised of the Manor and Advowson, and presented one P. and from T. it descended to R. as Son and Heir, and that R. adher'd himself to the Enemies of the King in Scotland, by which he was outlaw'd; and the Church voided by Resignation, and the King seised the Manor and Advowson, and presented E. and is disturb'd. Chelre demanded

demande Judgment of the Count ; for it does not appear if the King had Tenure of the Manor and Advowson or Annuit et Vastum et non Allocatur. Chelre, Judgment of the Count ; for it does not appear if the Advowson was appendant or not, et non Allocatur. And after, All except W. pleaded Ne disturba pias, and W. the Incumbent pleaded, That the same R. who was outlaw'd, a long Time before the Outlawry, leas'd the Manor and the Advowson to J. S. for Life, the Remainder to T. in Fee, and A. presented this same W. who was received and instituted, Abique hoc that R. had any Thing the Day of the Felony, or after, Prius, Judgment if any Disturbance, Prius &c. The King pleaded Estoppel, that it was found by Office, that R. was seized the Day of the Felony ; And He in Remainder after the Death of A. travers'd the Office in this Point, and found against him, Judgment if against this Matter found against the Patron he shall be received ; and because the Statute does not give, that the Incumbent shall be received but where the Patron pleads faintly ; and when he traverses, and it is found against him, this is not faintly, and so he and the Incumbent estopp'd ; and because that which is found against the Patron shall be try'd by the Incumbent again, and he claims by the Patron, therefore he shall be bound by that which binds the Patron ; by which it was awarded, that the King have Writ to the Bishop. Br. Quare Impedit, pl. 66, cites 38 E. 3. 31.

(C. c) Usurpation. The Effect.

Fol 369.

1. **H**E who usurps gains the Fee thereby. 9 H. 6. 30. b. 31.

Watf. Comp. Inc. 8vo.

284 cap. 13, cites S. C.—— Usurpation gains the Church, so that the Advowson can't be granted over. Cro. E. 811. in the Case of Leak v. the Bishop of Coventry and Babington.—— S. P. Watf. Comp. Inc. 8vo. 222, cap. 13.

2. If an Infant, seized of a Manor with Advowson appendant, suffers Usurpation, and after he makes Feoffment of the Manor cum Pertinentiis, neither the Feoffee nor the Feoffor has any Remedy of the Usurpation. Br. Presentation, pl. 62, cites 16 E. 3.

So if the Tenant for Life, the Remainder over, suffers Usurpation and dies,

he in Remainder is without Remedy of the Usurpation. Ibid.

3. If I grant Advowson to a Parson and his Successors, and the Church voids, and a Stranger presents his Clerk, who is instituted and indulted, and the 6 Months pass, he has lost the Advowson for ever ; for the Parson cannot have Writ of Right, because neither he nor any of his Predecessors were thereof seized ; and he can not have Quare Impedit, because the 6 Months are pass'd ; and he can not have Assize of Darrien Presentment, for he never presented, and this Lachesse shall bind the Successor for ever. Br. Presentation, pl. 25, cites 19 H. 6. 40. Per Ascue J. Quod non Negatur.

4. If the King confirms the Patronage of an Usurper that has presented several Times, and the several Clerks inducted, such Confirmation is void, for the Usurper has no Patronage ; but if the King confirms the Incumbent 'tis good to the Incumbent, for he is Incumbent de facto, and the King can't remove him without Quare Impedit by the Stat. 25 E. 3. 13 R. 2. Jenk. 312, pl. 96.

5. If a Man present by Usurpation to my Advowson within 6 Months, I may have a Quare Impedit ; but after the 6 Months if the Church become void, I can't present, but am put to my Writ of Right of Advowson. And if a Man usurps on the King, he is put to his Quare Impedit within the 6 Months, and that a double Usurpation on the King puts him to his Writ of Right. Godb. 263. pl. 362. Mich. 13 Jac. C. B. Anon.

(C. c. 2) Usurpation at Common Law. How; And Remedied by Statute.

† An Affise of Darrein Presentment no Man can have without alleging a Presentment in his own Time.

1. 13 Ed. 1. **W**HEREAS of Advowsons of Churches there be but three Original Writs; that is to say, one Writ of Right and two of Possession, which be † Darrein Presentment and Quare Impedit.

2 Inst. 356.

It appears by this Statute, that every Presentment which was admitted would put the very Patron out of Possession at Common Law, and to

And hitherto it hath been used in the Realm, that when any having no Right to present, had * presented † to any Church, whose Clerk was † admitted, he that was very Patron could not recover his Advowson || but only by a Writ of Right, which should be tried by Battail or by Great Affise; whereby Hirs within Age, by Fraud, or else by Negligence of their Wards, and Hirs both of Great and Mean Estate, by Negligence or Fraud of Tenants by the Courtesy, Women Tenants in Dower, or otherwise, for Term of Life, or for Years, or in Fee Tail, were many Times disherited of their Advowsons, or at least (which was the better for them) were driven to their Writ of Right; in which Case hitherto they were utterly disherited.

his Writ of Right of Advowson. Br. Presentation, pl. 46. — Br. Plenarty, pl. 16. cites S. C. — By the Order of the Common Law, if one had presented to a Church whereunto he had no Right, and the Bishop had admitted and instituted his Clerk, this Incumbent could not be removed for divers Reasons; 1st, for that he came in to the Church by a judicial Act from the Bishop, (who the Law intended, Scrutatus Archivis, to do Right) the Incumbent could not be removed neither by Writ of Right of Advowson, nor Affise of Darrein Presentment, nor Quare Impedit, only the Patron should recover his Advowson in a Writ of Right of Advowson, which by the Usurpation was divested from him. 2dly, That by the Common Law, in every Town and Parish there ought to be Persona Idonea, and this appeareth by the Words of the Writ of Quare Impedit &c. Quod permittat presentare Idoneam Personam &c. And when the Bishop had admitted him Able, which implied that he was Idonea Persona, then the Law had its final Intention, viz. That the Church should be sufficiently provided for, and then the Church was said to be Plena & Consulta. 3dly, That the Incumbent having Curam Animarum might the more effectually and peaceably intend so great Charge the Common Law provided, That after Institution he should not be subject to any Action, to be removed at the Suit of any Common Person, without all Respect of Age, Coverture, Imprisonment, or Non sane Memory, and without Regard of Title, either by Descent or Purchase, or of any Estate; wherein you may (as often it hath been said) observe, what Inconveniencies follow when the right Institution of the Common Law is not observed. 2 Inst. 357.

* By this Word (presented) it appeareth that no Plenarty doth put the Patron, that hath Title to present, out of Possession, but only Plenarty by Presentation; but Plenarty by Collation doth put him that had Right to collate out of Possession. 2 Inst. 357. — S. P. 6 Rep. 30. in Green's Case. — S. P. Cro. E. 207. Smallwood v. Bishop of Coventry and Marsh.

If Tenant for Years or Guardian in Chivalry bring a Quare Impedit, altho' the Defendant hath a Writ to the Bishop against the Termor or Guardian, and his Clerk is admitted, instituted and inducted, notwithstanding the Tenant of the Freehold of the Advowson is not put out of Possession. Note a Diversity between a Mere Usurpation and him that comes in by Course of Law. 2 Inst. 357.

† This is intended of a Church Presentative. 2 Inst. 357.

‡ Albeit that Admissus in its proper Sense is, When the Bishop upon the Examination findeth him Able, (that is) Idonea Persona, yet here it is taken for Institution; for here is implied ad eandem Ecclesiam, and therefore of Necessity it must be here taken for Institution, and the rather for that before Institution the rightful Patron is not put out of Possession. And it is to be observed, that by the Institution the Church, as to all Common Persons, is Plena & Consulta as to the Spirituality; that is to say, the Cure of Souls; for when the Bishop doth institute him, he saith, Instituo te ad tale Beneficium &c habere Curam Animarum, & accipe Curam tuam &c meam; but before Induction the Parson hath not the Temporalities belonging to his Rectory. 2 Inst. 358.

But the Church is not full against the King before Induction, because in the King's Case Plenarty is to be intended of a full and complete Plenarty as well to the Temporalities as to the Spiritualities. And nota, present, [Presentations] Admissions, Institutions &c. are the Life of Advowsons; and therefore, if Patrons suspect that the Register of the Bishop will be negligent in keeping of them, he may have a Certiorari to the Bishop to certify them into the Chancery. 2 Inst. 358.

|| This is to be understood where the Patron had a Fee Simple, and that he, or some of his Ancestors had presented; but if the Patron claimed the Fee Simple of the Advowson by Purchase, and had never presented, there he could have no Writ of Right of Advowson, but, before this Statute, had lost the Advowson; And likewise if Tenant in Tail or Tenant for Life had suffered any Usurpation, they had been Remediless by the Common Law, because they could have no Writ of Right. 2 Inst. 358. — At Common Law if Tenant for Life, or by the Courtesy, or in Dower, or the Guardian or Tenant in Tail, had suffered Presentment, tho' put him in Reversion, or the Heir to his Writ of Right of Advowson; and so as to the

1. c. 2. the Patron had suffered Usurpation; and so if the Bishop, Archdeacon, Parson, and the like, had suffered

ferred Usurpation; and those are remedy'd by this Statute, and that the Heir, or he in Reversion, or the Feme or Successor shall have *Quare Impedit* at the next Avoidance. Br. Presentation, pl. 46. — Br. Plenarty, pl. 16, cites S. C. — S. P. 6 Rep. 50. Mich 3 Jac. B. R. in Boswell's Case.

If a Bishop, Abbot, or Prior &c. purchase an Advowson, and suffer an Usurpation before they present, they and their Successors are barr'd for ever, unless by force of this Act the Usurpation be avoided in a *Quare Impedit*. 2 Inst. 358. — So if a Man purchases a Manor with the Advowson appendant, and suffers Usurpation at the first Avoidance, he is without Remedy for ever; for he cannot have *Quare Impedit* after the 6 Months, and he cannot have Writ of Right of Advowson, because he never had Possession. Per Thorp. Nota. Br. *Quare Impedit*, pl. 29, cites 43 E. 3. 14. — A Purchaser is not within the Aid of this Statute; for he cannot have an Action Possessory, because he cannot allege a Presentation in himself as he ought to do in his Count; and he cannot have a * Writ of Right, because he cannot allege Seisin in the Esplees as he ought to do by the Law. Per Doderidge J. 3 Bullt. 40. Trin. 13 Jac. B. R. Harris v. Austin. — * S. P. But he may have a *Quare Impedit*, and allege a Presentation in him from whom he purchased the same; and to that end, saith Britton, was the *Quare Impedit* provided, for Remedy of such Purchasers; but the *Quare Impedit* is more ancient than the Time of E. 1. as appeareth by Granville. 2 Inst. 356. — In 8 E. 1. it appeareth Quod sunt tria Brevia de Advocacione Placitabilia, Brevia de Recto, *Quare Impedit*, & *Ultima* Presentationis, but yet the Original Writs of Dower and *Cessavit* &c. do lie of an Advowson, and so doth the Judicial Writ of *Seire factis*. 2 Inst. 356.

* It is provided, that such Presentments shall not be so prejudicial to the * The Pre-right Heirs, † or to them unto whom such Advowsons ought to ‡ revert after the Death of any Persons. * The Pre-
amble
extends only
to Heirs in
Ward, Per

Fraudem & Negligentiam Custodum &c. And the Words of the Body of the Act are, Quod hujusmodi Presentationes, (such Presentations) but these Words are to be expounded, Such Presentations as be in the same Mischief; and therefore this Act extends to Heirs of Advowson, tho' they be out of Ward. 2 Inst. 358.

And this being a Law that suppresseth Wrong and advanceth Right, doth bind the King, tho' he be not named in the Act. 2 Inst. 359. — The King being informed that he had Interest, presented during Non-age of the Patron; and on another Avoidance, the Patron presented, and the King brought *Quare Impedit*, and he pleaded as before; and it was held, that the Statute of Westminster 2, does not aid the Defendant, tho' he be an Infant; for the Statute mentions, Where Usurpation is had upon an Infant, Feme Covert, Termor, Tenant for Life, or the like, by negligent Keeping, that he shall have the same Action and Exception as their last Predecessor might have had; and this of Heirs who come in by Descent, who may be in Ward, or have Actions as Heirs of their Ancestor. But ** Infant Purchaser has no Guardian or Action Ancestrel of that which is purchased, and therefore Usurpation had upon him now shall bind him, as it should have bound an Infant or Feme Covert at Common Law, by the Opinion there, and this immediately within 6 Months; †† for the 6 Months is given by the Statute to bring the *Quare Impedit* to reform it. Br. *Quare Impedit*, pl. 18, cites 35 H. 6. 59. — ** S. P. 2 Inst. 353. — †† S. P. Br. Presentation, pl. 46. — Br. Plenarty, pl. 16, cites S. C. — And it was held, that if the Statute shall serve the Infant, yet the King shall not be bound thereby; for where by the same Statute Presentment had and enjoy'd 6 Months by Lapse shall bind, yet the King shall not be bound thereby, but shall have *Quare Impedit* after the 6 Months, by which the Defendant amended his Plea. Br. *Quare Impedit*, pl. 18, cites 35 H. 6. 59.

A Prior was seised of an Advowson, and granted the two next Presentations to W. F. and his Heirs. The Church voided. W. presented and died. The Church voided again, and his Son and Heir presented where this is only a Chattle; and it was agreed, that this is an Usurpation, which put the Party to his Writ of Right of Advowson at Common Law; but now this is expressly aided by this Statute. Br. *Quare Impedit*, pl. 14, cites 34 H. 6. 27.

† Nota (those) hæc est illis hereditibus, to those Heirs that have the Reversion of the Advowson by Descent: for the Preamble saith, Hæredes etiam five majores, five minores &c. And the Perchote of this Branch is, Quæm haberet ultimus Antecessor hujusmodi hæredes &c. So as this Statute doth help the Heir of him in the Reversion, and not the Lessor himself; but the Heir of him in Remainder is not within the Purview of this Act. 2 Inst. 359.

‡ That is of Tenant by the Courtesy, Tenant in Dower, or otherwise for Life, or for Years, or in Fee Tail. 2 Inst. 359. — Usurpation had upon Tenant in Tail shall bind himself for his Life, but not the Issue in Tail; for he is aided by the Statute. Per Belk. Br. *Quare Impedit*, pl. 29, cites 43 E. 3. 14. — If the Advowson was in Gross, then the Presentments are but Usurpations, and shall not Prejudice the Heir in Tail by Reason of the Statute. Br. *Quare Impedit*, pl. 31, cites 43 E. 3. 24.

The * same shall be observed in Presentments made unto Churches, being of * If a Feme the † Inheritance of Wives, what Time they shall be under the Power of † Covert hath their Husbands, which must be aided by this Statute by the Remedy aforesaid. an Advow-
son by Pur-
chase, she is
not within

the Remedy of this Act. 2 Inst. 360. — † This is intended of an Advowson by Descent. 2 Inst. 360.

Also Religious Men, as Bishops, Archdeacons, Parsons of Churches, and By this, Pre- other Spiritual Men, shall be aided by this Statute, in Case any having no tentation and Right to present, do present unto Churches belonging to Prelates, Spiritual Usurpation in Time of Dignities,

Vacation, al- Dignities, Parsonages, or to Houses of Religion, what Time such Houses, be it the Prelacies, Spiritual Dignities, or Parsonages be vacant.
 Freehold and Inheritance is in Abeyance in Gremio Legis, yet the Usurper gaineth a Fee-Simple in the Advowson; like as if one entereth into Lands during the Vacation, and claim the same as his Inheritance, he gaineth an Inheritance by Wrong; but yet, as the dying seised of Lands in that Case during the Vacation shall not take away the Entry of the Successor, no more shall the Usurpation during the Vacation take away his Right of Presentation when the Church becomes void; and if he be disturbed, he shall have his Quare Impedit. 2 Inst. 360. — See Supra pag. 394, 395.

So great Re- Sect. 2. *Neither shall this Act be so largely understood, That such Persons, gard the Law hath to for whose Remedy this Statute was ordained, shall have the Recovery aforesaid, Judgments, as this Act Surmising, that Guardians of Heirs, Tenants in Tail, by the Courtesy, Tenants in Dower, for Term of Life, or for Years, or Husbands, which faintly provideth, have defended Pleas moved by them or against them.*
 That by any

general Words of this Act they shall not be avoided by Pretence of Faint Defence; quia Judicia in Curia Regis reddita pro Veritate accipiuntur; & Judicia sunt tanquam Juris dicta. 2 Inst. 360

Here is one of the Maxims of the Common Law; That, *Because the Judgments given in the King's Courts shall not be annulled by this Statute, the Judgment shall stand in his Force, until it be reversed in the Court of the King as erroneous, if Error be found.*

“Judicia in Curia Regis reddita non adnihilentur, sed stent in suo Robore quousque per Errorem, aut Attractionem adnulentur.”

“Nihil tam conveniens est Naturali Æquitati unumquodq; dissolvi eo ligamine, quo ligatum est.”

“Interest Reipublicæ res judicatas non rescindi.” 2 Inst. 360.

Or by *Affise of Darrein Presentment*, or by *Inquest by a Writ of Quare Impedit* if it be passed, or be annulled by *Attaint* or *Certification*, which shall be freely granted.

* This Clause extends as well to Strangers of Blood as to Coparceners many, *And sometimes * when an Agreement is made between many claiming one Advowson, and inrolled before the Justices in the Rolls or by Fine in this Form, That one shall present the first Time, and at the next Avoidance of another, and the third Time another; and so of many, in Case there be*

in Blood; and if one of the Parties or his Heirs, or any Stranger usurp in the Turn of another, the Party wrong'd is not driven to his Quare Impedit; for so it may be, that the Quare Impedit, or Affise of Presentment, may fail, and yet he may have Remedy by this Branch of the Act; for albeit there be a Plenary by 6 Months, yet the Party may have a Scire facias upon the Roll or Fine, and therein recover the Presentation and Damages. 2 Inst. 362.

See (G. a) And when one has presented, and had his Presentation, which he ought to (H. a) (K. a) have according to the Form of their Agreement and Fine; and at the next Avoidance, he to whom the second Presentation belongeth is disturbed by any that was Party to the said Fine, or by some other in his Stead,

It is provided, That from henceforth they that be so disturbed shall have no Need to sue a Quare Impedit, but shall resort to the Roll or Fine;

And if the said Concord or Agreement be found in the Roll or Fine, then the Sheriff shall be commanded, that he give Knowledge unto the Disturber, that he be ready at some short Day, containing the Space of 15 Days or 3 Weeks, (as the Place happeneth to be far or near) for to shew, if he can allege any Thing, wherefore the Party, that is disturbed, ought not to present.

And if he come not, or peradventure doth come and can allege nothing to bar the Party of his Presentation, by reason of any Deed made, written since the Fine was made or inrolled, he shall recover his Presentation with his Damages.

Sect. 3. And if the 6 Months be not passed, but the Presentment be de-reign'd within the said Time, then Damages shall be awarded to the Half Year's Value of the Church.

And if the Disturber have not whereof he may recompence Damages, in Case where the Bishop conferreth by Lapse of Time, he shall be punished by two Years Imprisonment.

No Damages by this Act are to be recovered but against him that is Impeditor or Dis-

covered but *against* him that is Impeditor or Disturber. 2 Inst 363. — In a Quare Impedit against the Patron and Incumbent, the Plaintiff recovers the Advowson *Post semestre tempus*; and because the Incumbent was Impeditor, for that he had counterpleaded the Title of the Plaintiff, therefore he recovers the Value for two Years as well against the Incumbent as the Patron. 2 Inst. 363.

And if the Advowson be dereign'd within the Half Year, yet the Disturber shall be punished by the Imprisonment of Half a Year.

2. 7 Anne, cap 18. Forasmuch as the Pleading in a Quare Impedit is found very difficult, whereby many Patrons are either defeated of their Rights of Presentation or put to great Charge and Trouble to recover their Right, which is occasioned by the Law as it now is; For Remedy whereof, be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons in Parliament assembled, and by the Authority of the same, That no Usurpation upon any Avoidance in any Church, Vicarage, or other Ecclesiastical Promotion, shall displace the Estate or Interest of any Person entitled to the Advowson or Patronage thereof, or turn it to a Right; but he or she that would have a Right if no Usurpation had been, may present or maintain his or her Quare Impedit upon the next or any other Avoidance, (if disturbed) notwithstanding such Usurpation.

(D. c) Upon what Thing Usurpation may be.

1. IF a Donative becomes void, and after a Stranger presents thereto, and his Clerk is admitted, instituted and inducted, yet this is not any Usurpation to the true Patron; But all this is merely void. Co. Litt. 344.

2. If the Ordinary deprives an Incumbent for Crime or other Cause in which he ought to give Notice thereof to the Patron, but he does not give Notice thereof to the Patron, but after a Stranger presents his Clerk, who is instituted and inducted, and 6 Months pass; it seems that this is an usurpation upon the Patron; for tho' the Ordinary shall not have any Advantage of any Lapse without Notice, yet the Church of itself is void, and against Strangers the Patron is bound to take Notice of it at his Peril. See Trin. 44 El. B. R. Green and Baker's Case. Watf Comp. Inc. 8vo. 157, cap 42. cites S. C.

3. If any Clerk, being instituted and inducted, resigns into the Hands of the Ordinary by Covin between him, the Ordinary, and J. S. of Purpose that J. S. shall present J. D. to the Intent, to defeat me, the very Patron, of my Presentation, and J. S. presents J. D. accordingly, and 6 Months pass, yet this shall not be any usurpation, because the Ordinary hath not given to me any Notice of the Resignation; for otherwise every one may be defrauded by such Covinous Dealing. Tr. 40 El. B. between Lacon and the Bishop of Lincoln. Per Curiam. See the Statute of 7 Ann^o, cap. 18. at (C. c. 2) Supra

(E. c) Usurpation. What Act or Thing will make an Usurpation, or put a Man out of Possession.

1. IF a Man recovers in a Quare Impedit, and has Execution, every other is out of Possession thereby. 9 H. 6. 57. Br Quare Impedit, pl. 7. cites S. C.

Br. Quare
Impedit. pl.
6. cites S. C.
Recovery a-
gainst a
Stranger, or
against the

Incumbent the Patron not named, shall not bind the Patron; quod nota Br. Quare Impedit. pl. 47. cites 7 H. 4. 25. 37. — And Brooke says it appears elsewhere, that where the *King* or the *Pope* presents the Quare Impedit shall be against the Incumbent alone, and in other Cases it shall be more commonly against the Patron and Incumbent, or against the Patron alone, unless in Special Cases. Br. Quare Impedit. pl. 47.

2. If a Man brings Quare Impedit against the Incumbent only without the Patron and Recovers, and by Writ to the Bishop the Incumbent is removed, and the Clerk of the Recoveror instituted, this shall put the Patron out of Possession tho' he was no Party to the Suit. Dubitatur. 9. H. 6. 32.

3. If the Bishop be a Disturber, no Lapse shall incur by his Disturbance, tho' the Church be void by 6 Months. Tr. 3. Ja. B. R. between Palmer and Smith. Resolved per Curiam.

4. As if the Patron present to the Bishop, and he will not examine the Clerk but delays him, by which the 6 Months pass, yet no Lapse shall incur to the Bishop; Because he is a Disturber, and this comes by his own Disturbance. Tr. 3. Ja. B. R. between Palmer and Smith. Resolved per Curiam.

5. If a Stranger presents to my Church being void without any Right or Title, but merely by Tort, but he presents by Simony, and his Clerk is admitted, instituted, and inducted, and 6 Months pass, yet this is not any Usurpation to me; Because the Presentation, Admission, and Institution are made void by the Statute of 31 El. and the Presentee is not Incumbent de Facto. Co. Litt. 120.

6. If I present my Clerk, who is admitted, and after another presents and ousts my Presentee without Title, Now, notwithstanding that Presentee could not sue Spoliation, yet I am not out of Possession, but after the Death of my Presentee I shall present again. Br. Consultation. pl. 1. cites 44 E. 3. 33. Per Tank.

7. In Scire facias it was agreed, That if the King seizes Advowson of a prior Alien for War and Presents, and after the Prior is restored, this does not put the Prior out of Possession, nor shall the Presentment of the Guardian in Chivalry put the Heir out of Possession; For the Possession of the King affirms the Title of the Prior Alien, and of the Heir; But the Heir nor the Prior Alien, shall not make Title by this Presentation of the King. Br. Presentation pl. 47. cites 46 E. 3. 6.

8. Where the Defendant presents in Jure Uxoris, yet if she has no Right this does not vest Possession in him. Br. Quare Impedit. pl. 108. cites 14 H. 6. 23.

9. Between Patrons, if one of them be presented and admitted, and instituted by the Ordinary, and is in by 6 Months, this shall gain Possession; Contra where he presents a Clerk, and puts him in Possession without the Ordinary; As where I have a Free Chapel, to which I may make Collation, and put my Clerk in my self without presenting to the Bishop, there if a Man at an Avoidance puts in his Clerk who is in by 6 Months, this does not put me out of Possession, nor if he presents him to the Ordinary, who admits and institutes him. So where an Abbot is Elective, and not presentable, there Presentation does not gain Possession, Per Markham, quod Danby concessit; but Newton held Contra, and that in those Cases of Presentation to the Bishop, where the Clerk is admitted and instituted, he is a clear Gainer of Possession; otherwise it seems clearly to be, where he puts him in Possession of his own Authority, by which he continues till the 6 Months pass; this does not gain Possession clearly as it seems, Contra of the Bishop who makes Collation by Lapse; For there 6 Months make Possession. Br. Quare Impedit. pl. 83. cites 22 H. 6. 25.

10. A Prior was seised of an Advowson, and granted the 2 next Presentations to W. F. and his Heir, the Church voided, W. presented and died, the Church voided again, and his Son and Heir presented, whereas it is only a Chattle; And it was agreed that this is a Usurpation which puts the Party

It was re-
solved, That
if Tenant in
Tail of a
Manor with

to his Writ of Right of Advowson by the Common Law, but now this is expressly aided by the Statute of *W. 2.* That Usurpations permitted by Termors shall not grieve him in the Reversion, by which at the next Avoidance the Prior presented, and Issue was taken by the other, That the Prior did not grant Modo & Forma &c. and would not stay the Matter in Law. Br. Quare Impedit. pl. 14. cites 34 H. 6. 27.

nor, then the Grant is void, as it seemed by 3 Rep. 81. And altho' such *Grantee presents* by Colour of such Grant, yet that is a Usurpation which shall bind. Noy. 143. Anon.

11. By the *Possession of the King* by Presentation, or by the Possession of any other Person by Presentation, every other is out of Possession. Br. Quare Impedit. pl. 18. cites 35 H. 6. 59.

perfect Presentation, and where the Incumbent continues by 6 Months; For 10 Presentments within 6 Months shall not gain Possession. Br. Quare Impedit. pl. 149. cites 12 H. 8. 12 ——— S. P. if all the Clerks die within the 6 Months. Br. Presentation pl. 23. cites 14 H. 8. 2.

12. He who presents himself by a strange Name, where he is Patron and takes, he shall be put out for Spoliation; For he may pray the Ordinary to admit him, but not present himself. Br. Quare Impedit. pl. 18. cites 35 H. 6. 59.

gain Possession; For there is no Presentation; For he cannot plead Plenarty of his own Presentation. ——— Br. Presentation, pl. 23. cites 14 H. 8. 2. ——— Br. Quare Impedit. pl. 86. cites 14 H. 8. 2. 29.

13. If a Church becomes void, to which I have Cause to present, and a Stranger makes Presentation, and his Clerk is instituted and inducted, against whom a Stranger brings Quare Impedit, and recovers, this Recovery shall not grieve me who am rightful Patron, and a Stranger to this Recovery &c. Agreed per tot. Cur. Keilw. 49 pl. 4. 18 H. 7.

14. If a Stranger presents the very Patron, this will not put him out of Possession. Br. Presentation pl. 23. cites 14 H. 8. 2.

15. If the Ordinary makes Collation within 6 Months, this does not gain Possession to the Successor; For he has Colour as Ordinary; Contra, where he presents without Colour. Note the Diversity. Br. Presentation pl. 23. cites 14 H. 8. 2.

Possession; But Presentation with Admission gains Possession. Per Conisby and Fineux Ch. J. accordingly Ibid

16. If a Man presents himself, and is inducted, and dies, this does not toll the Action of the very Patron; But he may have Quare Impedit, and this does not gain Possession. Br. Presentation pl. 23 cites 14 H. 8. 2.

17. A College was founded by the Name of *Aula Scholarium* Reginae de Oxon. The Provost of the said College presented to a Church being void by Name of the Provost of the College of the Queen in Oxon, and omitted the Word (*Scholarium*) And it was held clearly by the Court, that this Presentation thus made, by a contrary Name of their Foundation, shall make no Usurpation, nor gain any Patronage to themselves; for there was no such Name of Incorporation as they presented by, and so consequently no Usurpation thereby by them gained. Bullt. 91. Mich. 8 Jac. Dr. Ayray v. Sir Richard Lovelace.

18. It was held by Brampton and Crooke J. that a Naked Presentation without any Induction, does not gain any Right, and the very Patron by this is not put out of Possession, but that it is the Institution and Admission by the Ordinary, which is a Judicial Act, that makes the Usurpation, and there is not any Interest gained before; for if there be a Presentation without Institution, nothing is done, therefore if the Usurpation is gained by the Institution, which is subsequent to the Presentation, the Usurper in his Declaration cannot say that he was seized in Fee and presented, which is precedent to the Act which makes the Usurpation,

Usurpation, viz. the Institution, And till Institution no Estate is drawn out of the Usurpation; that if after Presentation and before Institution, the very Patron grants his Advowson to a Stranger, the Grant is good, tho' afterwards there be Institution of the Clerk of the Usurper. And they said that in Truth there cannot be an Usurpation to gain the Fee till the Institution, and *by Relation*, which is a Fiction in Law, it shall not be so taken; for Relation and Fiction is to preserve, and to prevent Mischief, and not to do a Tort, as the Case in Question is. But Barkley and Jones held, That the Presentation is the sole Act of the Party which gains the Advowson, and the Institution is only a succeeding Ceremony; and when the Ceremony is perform'd, it shall have Relation to the precedent Act; and cited 6 E. 3. 41. b. that Presentation in Time of War, and Institution in Time of Peace, shall be an Usurpation in Time of War. Et sic pendet. Jo. 427. 428. Hill. 15 Car. B. R. in Case of Sir Henry Harper v. The Bailiffs and Burgesses of Derby.

(F. c) Usurpation. *For whom the Usurpation shall be said to be.*

Watf. Comp.
Inc. Svo. 207.
cap. 13. cites
Same Cases.

1. **I**f the King presents in Right of his Ward, who has not any Right to the Advowson, this vests the Inheritance in the Ward by Usurpation, because he has expressly presented in his Right. 42 E. 3. 4. b. 43 E. 3. 14. b. Contra 22 E. 4. 9. b.

2. So it is of a Common Guardian. Contra 17 E. 3. 60. 7 D. 4. 26. b.

Watf. Comp.
Inc. Svo. 207.
cap. 13. cites
S. C.

3. If I present as Procurator to J. S. to a Church of which J. N. is seised; this shall be an usurpation for J. S. if I am Procurator of J. S. 17 E. 3. 60.

4. So it shall be if I present as his Procurator, tho' I be not his Procurator. 17 E. 3. 60.

Watf. Comp.
Inc. Svo. 207.
cites S. C. —
S. P. Ad-
mitted per

5. So if I my self am seised of an Advowson, and I present as Procurator to a Stranger, this shall be an usurpation upon my self for the Stranger. 17 E. 3. 60.

Cur. Ow. 142 in C. B. 42 Eliz. in the Case of Rudd v. Topley. And upon the Reason thereof the principal Case there was ruled, viz. In a Quare Impedit, the Jury found that Edward Capell was seised of an Advowson in Fee, and did let it to the Defendant for Years, and during the Lease he presented the Defendant; and the Doubt was, Whether this was a Surrender or an Extinguishment. And it was held by all the Justices, That this could not be a Surrender, but is clearly an Extinguishment.

S. P. Co.
Litt. 52. a.
This is a
putting my-
self out of
Possession,

6 So shall it be, if I present as Attorney to a Stranger of an Advowson whereof I my self am seised, this shall be an usurpation for the Stranger. 17 E. 3. 60. b.

because the Parentee comes in by the Institution and Induction of the Ordinary.

(G. c) Usurpation. *What Person [may] usurp. The King.*

S. P. By all
the Justices,
except
Windham J.
For true it
is that the

1. **T**HE King may usurp 42 E. 3. 4. b. 43 E. 3. 15. D. 18 El. 351. 22. and cites Crim. 35 H. 8. The King may gain an Advowson by Presentment, and Plenary by six Months without any Title. Also against an Infant Purchaser.

King cannot do Wrong to any; but that which makes the Tort, and causes the Usurpation, is the In-

stitution

stitution and Induction, which is not properly Tort, because they are Judicial Acts. Sid. 163. Brown v. Spence.

In Quare Impedit by the King, who counted that he himself was seised of the Advowson, and presented his Clerk &c. who was Instituted &c. and after died, and he presented again, and the Defendant disturb'd him, the Defendant said, That before the King presented, or any Thing had, J. S. was seised &c. and presented, and his Clerk instituted and inducted, and convey'd the Advowson to himself by Grant of J. F. and after the Church voided, and W. S. inform'd the King that he had Interest, by which the King presented, and his Clerk was received and instituted &c. and after the Church voided again, and the Defendant presented, by Reason that he was within Age at the Time of the Presentation of the King absque hoc, that the King had other Title but by the Information. And it was held that the King was in Possession by Reason of his Presentation; and therefore see that the King may be an Usurper. Br. Quare Impedit, pl. 18. cites 35 H. 6. 59. — Br. Prerog. pl. 6. cites S. C.

For whom.

2. If the King presents in Right of his Ward, who has not any Right to the Advowson, this vests the Inheritance in the Ward; for he has expressly presented in his Right, and is an usurpation. Ergo 42 E. 3. 4. b. 43 E. 3. 14. b. Contra 22 E. 4. 9. b. See (F. c) pl. 1. 2.
3. So shall it be in Case of a Common Guardian. Contra 7 H. 4. 26. b. 17 E. 3. 60.

(H. c) Who may usurp in Respect of the Estate.

Fol. 371.

1. If a Man seised of an Advowson in Fee, grants the three next Avoidances of the Church to J. S. and after the Church voids, and the Grantor himself presents, and his Clerk Instituted and Inducted, tho' the Grantor himself has the Fee, so that he cannot gain a new Fee by an usurpation, yet this shall be an usurpation as to the Grantee, by which the two other next Avoidances to him granted are turned to a Right; and so because he cannot have a Writ of Right, he is without Remedy for them. B. 16 Ja. B. between Sir William Elkwayes and Tailor. Per Curiam. Intratur. Contra. Co. Litt. 249. there cites B. 18 El. B. Per Curiam, for the Privy between them [makes it] no usurpation, and because he cannot usurp upon himself. Hob 315. S. C. — The Grant of the three Avoidances is all one in-tire Interest, and he cannot have Writ of Right by Reason of the Feeble-ness of his Estate, and this Usurpa-

tion is not remedied by the Statute of W. 2. 5. And so his Right being remedyless, it is gone, and he in Reversion is seised in Fee discharg'd of this Grant, and having usurp'd within the 6 Months, the Interest does not continue divided in him; and if he dies, his Executor shall not have it but his Heir, for it is drown'd in the Reversion; as if Tenant for Life be disseis'd by him in Reversion, and dies seis'd, this is a Descent of the Estate in Fee, and so the Reversioner is seis'd in Fee of the Advowson. Adjudged accordingly. But Hutton Contra; for he held that they were 3 several Interests, as if 3 several Grants had been made. Jo. 6. pl. 4 S. C.

2. But B. 12 Car. B. between Legg and Sir Anthony Ager in Ejectione firmæ, adjudged per Curiam, that if Lessor of an Advowson usurps upon his Lessee for Years, that this shall not oust the Lessee of the next Turn, because Lessor cannot make any usurpation upon himself for the Privy between them; and therefore this Presentation upon the Lessee only bars the Lessee for this Turn only, and his Estate not turned to a Right; and in this Case they denied the said Case of Sir William Elkwayes and Tailour to be Law. See Co Litt. 249. a. and at the End of pl. 1. next above.

(H. c. 2) *Who shall be said to be the Usurper.*

1. **I**F a Head of a Corporation, by a *wrong Name of Incorporation*, presents a Clerk, who is Admitted, Instituted and Inducted; the Parry who is presented shall not by the Presentment be the Usurper, because the Presentment as to him (being by a void Name of Incorporation) is void in itself, and he by this gains nothing at all (the Presentation of him being by a contrary Name differing from the Name of the Foundation;) but this *Collation* here by the Bishop shall make Him to be the Usurper. Per tot. Cur. 1 Buft. 91. Mich. 8 Jac. Dr. Ayray v. Sir Richard Lovelas.

See (B. c) (I. c) Usurpation. Upon whom. Upon the King.
[Or others.]

For the Advowson was always appendant, and the Inheritance passes to the Grantee, and is not made disappendant, as in Case of a common Person; for the King cannot be put out of Possession; but the Patentee shall not have Quare Impedit of the first Disturbance; for that Presentment, being a Chose en Action, doth not pass unless mentioned in his Grant. And if the Patentee brings Quare Impedit on the 2d Avoidance, he shall make his Title by the Presentment of the King not making Mention of the Usurpation. 3 Le. 17. pl. 41. Mich. 14 Eliz. Anon. — 3 Le 61. pl. 89. Mich. 18 Eliz. C. B. the S. C. in the same Words. — Dal. 75. pl. 1. Anno 14 Eliz. S. C. — * Hob. 242.

2. But a Ban may usurp upon the Queen; For the Plenarty &c. is good Plea against her. 18 E. 3. 2. Adjudged. But there Quare.

3. This Usurpation is only to the Presentment.

A Man may usurp upon the King, if his Clerk be received, as well as upon a common Person; Quod Nota; and this puts the King out of Possession. Br. Quare Impedit, pl. 39. cites Fitzh. Quare Impedit 15 and 18 E. 3. 15. — But Brooke says it is said elsewhere, that Lapse shall not hold Place against the King; for Nullum Tempus Occurrit Regi; and from hence it seems that the King may have Quare Impedit after the 6 Months, if the Church be void, but if it be full by Presentation, and no Patron nor Incumbent alive who may be said Disturber, against whom the King may recover, the King is put to his Writ of Right of Advowson; Contra it seems where they are alive; for Plenarty is no Plea against the King. Per Cand. but Belk. contra.

In Quare Impedit it is admitted, that two Presentations shall put the King out of Possession, and put him to his Writ of Right of Advowson. Br. Presentation, pl. 9 cites 47 E. 3. 4. — And says, see 24 E. 3. 57. That the King shall have Quare Impedit or Writ of Right of Advowson, and some other Actions. And Brooke says, from hence it seems that the King may be out of Possession Ibid — Br. Prerogative, pl. 9. cites S. C. — Br. Quare Impedit, pl. 39. cites S. C. and 21 E. 3. accordingly. — S. P. Br. Prerogative, pl. 110. cites 41 E. 3. 10. — Vaughan Ch. J. said, That the Reason why two Usurpations put the King out of Possession is, that after the Death of the first Incumbent there is none against whom he may bring his Action. 2 Jo. 10. in Case of the King v. Jervice, cites Stamf. Prer. 39. 54. 62. — But see pl 5.

* S. C. adjudged in C. B. against the Opinion of Anderson Ch. J. there, that the King is put to his Writ of

5. A Man cannot usurp upon the King for the Inheritance and put him to his Writ of Right though he presents twice. D. 13 Ja. B. * Contra adjudged between the King Plaintiff, and the Bishop of Winchester and Matthews Defendants. D. 18 El. 351. 22. D. 28 H. 8. 24. 153. Co. 6. Greene 30. cites D. 25 El. B. Intratur. M. 21, 2. El. Rot. 2218. between + Pescod and Yardley. Adjudged, that double or treble usurpation by several Persons does not gain the Inheritance

heritance of the Advowson out of the King; for it is permanent, and is not devested thereby. Right. But Error being brought in

B. R. this Judgment was reversed, by the Opinion of Popham Ch. J. Yelverton, Williams, and Tanfield, Fenner being e contra; and they alleged two Reasons, 1st. The Right of Patronage, and the Advowson itself being an Inheritance in the Crown of Record, the Law so protects it, that by no Tort done by a Subject it can be divested; For in Case of the King there ought to be the same Means to divest it out of the King, (viz. a Record) as there is to intitle him, and here is no Matter of Record against the King; For the Presentation by a Subject is only Matter in Fact, which Act, though it is mixed with the judicial Act of the Bishop, yet it shall not prejudice the King, in as much as it is grounded only upon the Tort of the Subject. 2dly, No Man can shew when and at what Time the Usurpation upon the King commences; For there is no Doubt, but after the 6 Months passed from the Incumbency he may well present; for Plenary is no Plea against the King, & Nullum Tempus Occurrit Regi, and after such Usurpation upon the King, there is no doubt per Cur but that the Patronage is yet in the King to grant. And they all held, that during the Life of the first Presentee, there is no doubt but that the King may present, and then the Death of the Incumbent cannot make that an Usurpation which was not so in his Life; for his Death is a Determination of the first Tort, which will rather aid than hurt the King. And per Tanfield, according to this Resolution it was resolved also 23 & 24 Eliz. C. B. in one *Bardley's Case*, though in that Case there was not any Induction, which was the Reason that the Opinion of the Judges was not delivered in Point of Judgment, but all were of Opinion as they in this Court now are; and no Book in the Law is contra, but only a glancing Opinion in 43 E. 3. 19 E. 3. and 18 E. 3. Yelv. 90, 91. Trin. 4 Jac. B. R. the King v. Matthew — Noy. 18. S. C.

† Mo. 338. S. C. accordingly, by Name of *Yardley v. Prestwood*. — And. 81. pl. 147. S. C. accordingly — Cro. J. 125. S. C. accordingly, by Name of the King v. Champion.

Quare Impedit by the King, the Defendant pleaded, that the Church was full the Day of the Writ purchased &c. and † his Counsel demanded Judgment of the Writ; Et non Allocatur against the King. And there it is agreed in a Manner, that Plenary is no Plea against the King claiming in his own Right, or in another's Right, by which the Defendant alleged two Presentments in his Ancestor one after another, to prove Usurpation to put the King out of Possession. And per Belknap clearly, this shall not serve against the King, by which Candlish dared not demur, but traversed the Presentment of the King. Br. Plenary pl. 1. cites 43 E. 3. 14. — Usurpation upon the King does not gain Possession. Br. Quare Impedit, pl. 28. cites S. C. But Brooke says, Quare inde — — — † Orig. is (Counsel de luy in Judgment &c.)

In a special Verdict in Trespass, it was adjudged, That an Usurpation on the King's Title by Presentation will put him out of Possession, and he is put to his Quare Impedit, and cannot present, till the Incumbent is removed by Judgment. * But double or treble Usurpations by several Persons shall not gain the Inheritance of the Advowson out of the King; for that is permanent, and cannot be devested. Whereas, as to Presentation, the King may be put out of Possession, because that is transitory. Adjudged 6 Rep. 30. a Trin. 44 Eliz. B. R. Green's Case. — S. P. determined on a Writ of Error. Cro. J. 123 the King v. Champion, with this further Reason, That the King is put to his Action of Quare Impedit, because Reason requires that the Church should be served. — Cro. J. 385. the King v. the Bishop of Norwich. S. P. adjudged. — * Cro. El. 519. in Hussy's Case. S. P.

6. The Patentee of the King of an Advowson presents twice to the Church, and his Clerk is instituted and inducted where the Patent was void in Law, and * it did not pass by the Patent, yet the Patentee has so gained the Possession of the Advowson by this usurpation against all Strangers, that at the next Avoidance, if he be disturbed, he may maintain against a Stranger, who makes no Title thereto, an Action of Darrein Presentment. D. 18 El. 351. 22. Adjudged.

* Fol 3-2.

Common Law. An usurpation may be upon a Feme Covert. 50 E. 3. 13. b. at If a Feme purchase an Advowson, and take a Husband, and the Church voids, and the Stranger does present, and the Husband suffers an Usurpation &c. By this Usurpation the Wife shall be out of Possession after the 6 Months past, and she shall be put to her Writ of Right of Advowson if she have presented before; and if she have not presented, she is without Remedy; But otherwise it is, if the Feme hath an Advowson by Descent, or by Course of Inheritance. F. N. B. 34. (S.)

8. If a Common Person usurps upon the King, and his Clerk is admitted, instituted and inducted, the King is put to his Quare Impedit, and cannot present till the Incumbent is removed. Co. 6. Greene 30. But the King may bring his Quare Impedit at any Time during the

Lives of the Patron and Incumbent or of the Incumbent only, tho' it be after the 6 Months. Br. Quare Impedit, pl. 39 cites 47 E. 3. 4. — If there be an Usurpation upon the King by a consent Plenary, the King cannot present to the Church before he has removed the Incumbent by Quare Impedit, least Contentions might grow in the Church between the several Claimers of the Benefice, to the Disturbance or Hindrance of Divine Service, and this was by the Common Law. But in that Case the King is only put out of Possession as to the bringing of an Action, but the Inheritance of the Advowson is not devested out of him. 2 Inst. 358.

S. C. Jo
426. by the
Name of
Harper in
the Bailliffs
and Bur-
geses of
Derby, who
presented
Wierdsale,
and there
same Point
was agreed;

9. At the Ward of the King has an Advowson in Gros, whereof he is seised in Fee, but this is not found in the Office, and after the Church voids, though the King may present thereto without any Office thereof found, yet if a Stranger presents, and his Clerk is in by 6 Months, and after the Heir loses Liberty, this is an usurpation upon the Heir; For the King without such Office had not any Possession therein to protect the Inheritance of the Heir. *Hill. 14 Car. B. R. between Harper and Wierdsale in Writ of Error upon a Judgment in Bank in Quare Impedit adjudged per Curiam. In- tratur.*

because the King for want of an Office found had not gained any particular Estate, and so this is such Usurpation as will devert the whole Interest in the Advowson, and put the Heir out of Possession. *But if an Office be found in such Case, and thereby the King intitled to the Advowson during the Nonage of the Heir, and a Stranger presents to an Avoidance happening after the Death of the Ancestor and the Office found, this shall not devert the Reversion out of the Heir; For tho' the Stranger has by his presenting gained the Possession of the Advowson Pro hac Vice, yet this does not devert the Estate of the King during the Nonage of the Heir; and if the Estate of the King was not deverted out of him, the Inheritance shall not be; For so long as the particular Lessee or Grantee for Years, or the Lord by reason of Ward is in Possession, the Reversion shall not be deverted or turned to a naked Right.*

10. If an Infant purchases an Advowson, and Usurpation is had upon him, he shall not avoid it by Nonage; For the Statute says, *Per Negligentiam Custodum*, which is of an Infant who is in *ly Descent*; For an Infant and Feme Covert were bound by Usurpation at Common Law after 6 Months. *Br. Coverture, pl. 70. cites 35 H. 6. 62.*

4 Le. 209.
pl. 339.
Mich. 18
Eliz. B. R.
S. C. Anon.

11. The King was seised of a Manor to which an Advowson was Appendant, and the Church being void, a Stranger presented A. who was in by 6 Months unknown to the Council of the King who afterwards granted the Manor with the Advowson to W. R. Then A. died. It was held per Cur. that the Grantee shall present, because the Advowson was always appendant, and the Inheritance thereof passed with it to the Grantee; for it was not made Disappendant by this Usurpation unto the King, though in the Case of a common Person it had been so, until he had continued it and made it appendant again by a Writ of Right of Advowson. And it was agreed, that W. R. the King's Patentee shall have the next Avoidance, (though he could not have the present Avoidance for want of being mentioned in his Grant) and in *Qua. Imp.* to be brought by him, he shall make his Title by the last Presentation of the King, without making Mention of the Presentment of the Stranger. *Hob. 140. pl. 192. Mich. 13 & 14 Eliz. Anon.*

12. It was held by all the Justices, That no Usurpation can be upon *Parson imparsonce*. *Pl. C. 501. Mich. 18 & 19 Eliz. Grendon v. Bishop of Lincoln.*

(K. c) Usurpation. Upon whom. *In respect of Estate.*

S. P. if the
Advowson
be appendant,
but it serves
for the
others for
Title in

1. If two Jointenants are seised of an Advowson, and the one presents alone, yet this does not put the other out of Possession. *Pl. 7 Ja. B. between Kite and the Bishop of Bristol. Because the Ordinary might have refused the Clerk, and by reason of their Joint Title. 27 D. 8. 11. b.*

Quare Impedit after his Death. *Br. Presentation al &c. pl. 1. cites 27 H. 8. 1.* But he says, *Quare* if it had been an Advowson *in Gros*.—If one presents alone, and his Clerk is inducted, the other is out of Possession. *Br. Quare Impedit, pl. 52. cites 11 H. 4. 54. per Hanke.* And Brooke says, the King's Attorney in 35 H. 8. agreed with Hanke clearly.

2. So one Tenant in Common of an Advowson presents alone, this does not put the other out of Possession. *D.* 7 *Ja. B.* between *Kite* and the Bishop of Bristol.

Br. Presentation, pl. 1. makes a Quare of this Point Where one Parson presents in the Turn of her Coparcener, this does not

3. One Coparcener cannot usurp upon the other by presenting alone without the other. 17 *E.* 3. 37. b. *D.* 7 *Ja. B.* *D.* 9 *El.* 259. 20. *Dubitatur* 15 *E.* 3. *Affise Darrein Presentment.* 11. 9 *E.* 3. 39.

put her to her Writ of Right of Advowson as Usurpation made by a Stranger shall do, by reason of the Privy, so that she loses nothing but this Turn, and shall have her Turn again when it comes to her Turn again *Br. Quare Impedit*, pl. 129 cites 22 *E.* 4. S. — *S. P. Br. Quare Impedit*, pl. 157. cites 2 *H.* 7. 14. — *So of Grantees of Coparceners.* *Br. Quare Impedit*, pl. 139. *Ten. Presentations* by one Coparcener shall not oust the other of his Turn, tho' the 6 Months pass; For there is *Privy*, and they claim by one and the same Title, per *Brud. Ch. J.* in *C. B.* *Br. Presentation*, pl. 23. cites 14 *H.* 8. 2.

4. If two Coparceners make Partition to present by Turn, the one may usurp in the Turn of the other. 30 *E.* 3. 15.

Fin. Law. 8vo 198 — *Watf. Comp. Inc. 8vo.* 214. cap. 13. cites 5 *C.*

5. But such usurpation does not bind her upon whom the usurpation is at her next Turn, but that she may present.

6. If 2 Coparceners make Partition in Chancery, or make Composition by Fine to present by Turn, and after the one presents in the Turn of the other, yet this doth not put her out of Possession, but that she may present to the next Turn, and this by the Aid of the Statute of Westminster, 2 cap. 5. or by the Common Law. 33 *E.* 3. *Quare Impedit.* 196.

Watf. Comp. Inc. 8vo. 214. cap. 13. cites 5 *C.*

7. The Dean may usurp upon the Chapter by presenting alone, without the Chapter, to an Advowson, whereof the Chapter is seised by themselves (as it seems, tho' both are spiritual Persons. 17 *E.* 3. 64. b.

8. If 2 Churches are united and consolidated in one by the Assent of both Patrons, and it is agreed they shall present thereto *Alternis Vicibus* for ever, and after the one presents in the Turn of the other, this is an Usurpation; For they are not like to Coparceners who are privity in Blood. *D.* 9. *El.* 259. 20.

Watf. Comp. Inc. 8vo. 214. cap. 13. cites 5 *C.*

9. So if A. seised in Fee of a Manor, to which an Advowson is appendant, makes Composition with B. by Fine to present by Turn; By this Composition the Advowson is appendant every 2d Turn, and if the one usurp upon the Turn of the other, this shall put him out of Presentment; Because they are not Privies in Blood as Coparceners are, nor in Estate, as Jointenants, or Tenants in Common are. *D.* 9. *El.* 259. 20.

* *Fol.* 373. *Watf. Comp. Inc. 8vo.* 218. cap. 13. cites 5 *C.* *D.* 259 b pl 2. cites 43 *E.* 3. 25

10. If I am seised of an Advowson, and present thereto as Procurator of J. S. this shall be an usurpation upon myself. 17 *E.* 3. 60. adjudged.

F. N. B. 35 (O) cites 5 *C.* —

Ow. 142. *Rudd v. Topsey.* cites 17 *E.* 3. 3. & 24 *H.* 6. — See (*F. b.*) pl. 5.

11. If a Man grants 2 next Avoidances to J. S. and after a Stranger usurps upon the first Avoidance, this shall be an usurpation upon the 2d Avoidance, so that it is turned to a Right; and because the Grantee cannot have a Writ of Right, he is without Remedy. *D.* 16. *Ja. B.* between *Sir William Ellis* and *Taylor.* Per Curiam.

Watf. Comp. Inc. 8vo. 217. cap. 13. cites 5 *C.* — So where the Grantor

himself usurps upon the first Voidance. See (*H. c.*) pl. 1. and the Notes there. — *But* *Ibid.* pl. 2 is *Contra.*

12. If 2 Jointenants of a Manor, to which an Advowson is appendant are, and the Church voids, and the one presents alone, this is not any usurpation to his Companion, but it is good Title at the next Avoidance in a Quare Impedit to allege this Presentment by the one to serve for both. 27 *H.* 8. 11. b.

See pl. 1.

By the Common Law, if an Advowson descends to divers Coparceners, 13. 13 E. 1. cap. 5. S. 5. Enacts, That when an Advowson descends unto Parceners, tho' one presents twice, and usups upon his Co-ten, yet he that was negligent, shall not be clearly barred, but another Time shall have his Turn to present when it falls.

Coparceners, if they cannot agree to present, the Eldest shall have the 1st Turn, and so every one according to Seniority, and this Privilege extends not only to their Heirs, but to their Assignees, whether they have their Estate by Conveyance, or by Act in Law, as Tenant by the Curtesy, and therefore although the Coparceners do make Composition to present by Turn, this being no more than the Law appoints, (Expressio eorum quæ tacite insunt nihil operatur) they remain Coparceners of the Advowson, and the Inheritance of the Advowson is not divided; and notwithstanding this Composition, they may join in a Quare Impedit if any Stranger usurp in the Turn of any of them; and the sole Presentation out of her Turn did not put her out of Possession in respect of the Privy of Estate, no more than if one Coparcener takes the whole Profits, 2 Inst 365.

This Law doth extend to Usurpation by one Coparcener upon another as well before Partition as after. 2 Inst 365.

14. A Man seised of a Manor with Advowson appendant had Issue four Daughters, and died, and they made Partition of the Manor, and that each should present by Turn in Degrees, as their Age was, by which the Eldest commenced &c. and her Clerk was in, and after the Eldest died, her Heir within Age, and found by Office for the King, and he seised the Ward, and after the Church voided again, and the King presented in Turn of the second Daughter: And per Catesby the King presented in Right of the second Daughter, and therefore his Presentment in the Turn of the second Daughter, does not put her to Writ of Right of Advowson; But to this Brian and Choke were strongly Contra, and that it was Usurpation; For there is no Privy of the Partition in the King, and this Presentation is in Jure Regis Proprio, as Lord, and never shall make Title to the Heir in Quare Impedit. Br. Quare Impedit. pl. 139. cites 22 E. 4. 8.

15. Where there is a Corporation of Master and Confrerers, and the Master presents in his own Name, this will not put the Successor out of Possession; For he cannot do a Tort to himself; per Fitzjames Justice; and all the Justices in B. R. were with the first Judgment. Br. Presentation. pl. 23 cites 14 H. 8. 2.

16. If 2 Jointenants present one of themselves, this does not gain Possession; For it is not a Presentation, but a Prayer to be admitted. Per Fitzjames. Br. Presentation, pl. 23. cites 14 H. 8. 2.

But if a Bishop be Purchaser of an Advowson, and suffers an Usurpation, that shall not bind his Successor.

17. Where a Bishop suffers an Usurpation of a Church in Right of his Bishoprick, it shall not bind his Successor, but himself only during his Time; And it was resolved by all, that Usurpations shall bind the Bishops who suffer them, but not their Successors; because it is within the Statute 1 Eliz. which restrains Alienations and Grants by Bishops &c. And Judgment accordingly. Cro. J. 673. Mich. 21 Jac. B. R. Dalton v. Bishop of Ely.

Per Hobart Ch. J. Ibid.

Br. Error. pl. 83. cites S. C.

18. When one usurps upon a Lessee for Years, this gains the Fee, and puts the true Patron out of Possession; And though by the Statute of W. 2. cap. 5. he in Reversion after the Lease may have a Quare Impedit, when the Church is void, or may present, and if he does present, and his Clerk is admitted and inducted, then he is remitted, yet till it be recovered, or his Clerk be in, the Usurper hath the Fee, and the Writ of Right lies against him, and that descends to his Heirs. Hutton. 66. Rudd. v. Bishop of Lincoln.

(L. c) Usurpation. Upon whom. In what Cases Usurpation * *upon one shall be upon others*, at the Common * See H. c. Law.

1. **I**F Lessee for Years, or Guardian, brings Quare Impedit, tho' the Defendant has Writ to the Bishop against the Termor or Guardian, and his Presentee accepted, yet the Tenant of the Franktenement is not put out of Possession thereby. 30 E. 4. 14. b. Curia.

2. If 3 Coparceners make Partition to present by Turn, and the Eldest usurps in the Turn of the Middlemost; this shall not be any usurpation upon the Turn of the youngest. * 30 E. 3. 5.

S. P. Watt. Comp. Inc. Svo. 214. cap. 13. cites Keilw. 1. 2.

Inft. 365. 2 H. 7. 4. 5. 22 E. 4. 9. — * This seems misprinted for 30 E. 3 (15) and is the Case of Sir Richard Talbot v. the Bishop of Hereford.

3. [So] if 3 Coparceners are, and the Eldest presents in her Turn without Partition, and after a Stranger usurps in the Turn of the second, yet this is not any usurpation as to the 2d or 3d Coparcener, but only to the 2d. 12 H. 7. Kell. 1. Per Curiam.

The Court inclined that it would put all out of Possession, and would not

permit a special Verdict upon the Motion of Serjeant Maynard, but a Case was made of it for the Consideration of the Judges. 2 Vent. 39. Patch. 35 Car. 2. C. B. Anon. — Watt Comp. Inc. Svo. 214. cap. 13. cites Same Cases. And Dr. Watson says the Case of Vent seems to be upon this Reason that Partition, and cites made of an Advowson does not sever the Right and Inheritance thereof, but is only of the Possession. and cites 2 Co. 8. Corbet's Case; therefore the Inheritance remaining intire, an Usurpation a Severance in the Turn of one Coparcener, gains the whole Inheritance by Wrong and avoided, and consequently must put all the Coparceners out of Possession.

4. So had it been, tho' Partition had been made to present by Turn. See (M. c) 12 H. 7. Kell. 1. pl. 8.

5. If Tenant for Life, the Remainder over in Fee suffers Usurpation, and the Tenant for Life dies, he in Remainder has no Remedy for this Usurpation. Br. Quare Impedit, pl. 162. cites 16 E. 3.

6. An Advowson descended to 3 Coparceners Infants, and before Presentation by any of them, a Stranger usurps, it seemed to the Court that Usurpation should be upon all; for one Right descended to them, and they may join in the Presentment. 21 E. 3. 31.

And tho' upon a Disagreement between them, the Eldest may

present, yet it is but a Privilege which the Eldest Daughter may waive. Trin 20 Car. 1. C. B. Rot. 1849. Hoy v. Blevy.

(M. c) Usurpations. Defeating of Usurpations.

1. **I**F the Disseisor of a Manor to which an Advowson is appendant, presents to the Advowson, and his Clerk is Inducted, and after Disseisee re-enters, at the next Avoidance he may present; for this defeats the Mesne Possession and usurpation. * 3 H. 4. 8. † 14 H. 6. 16.

* Br. Quare Impedit, pl. 45. cites S. C. — † Br. Presentation, pl. 31.

cites S. C. — For the Advowson never was disappendant; and by the Re-entry of the Disseisee all Mesne Estates are defeated, and the Disseisee remitted. Per Fulth, Which was neither denied by the Justices, nor affirm'd. Br. Presentation, pl. 32. cites 14 H. 6. 24. — It was said for Law, that by his Regress he has recontinued the Manor, and the Advowson was always appendant, and so remained after the Regress; but contra of Advowson in Regress. Br. Quare Impedit, pl. 107. cites 14 H. 6. 15.

2. But if he re-enters within the 6 Months, his Presentee shall be received, and the other ousted. (It seems it is intended upon Recovery in Quare Impedit.) 14 H. 6. 24. Quare.

Presentation is in Nature of a Re-entry and

and Usurpation by one that hath a *former Right*, but which was usurp'd upon, shall work a *Remitter*.
Cart. 44. *Cornwallis v. Hood*.

3. But otherwise it is [cf] Advowson in grefs. * 3 D. 4. 8. 14 D.
Fol. 374. 6. 16.

* Br Quare Impedit, pl. 45. cites S. C.

F. N. B. 34. 4. If a Feme suffers an Usurpation upon her Advowson, and after she
(S) in the takes Baron, who presents to the next Avoidance in Right of the Feme
Notes there (and Clerk inducted) this vests the Possession in the Feme. 14 D.
in Marg. 6. 24. Quare.

Watf. Comp. 5. If the Patron of an Advowson creates a Vicarage out of it law-
Inc. Svo. 240. fully, and after a Stranger usurps upon him in the Parsonage, and after
cap. 15. that in the Vicarage, and then the Patron recovers the Advowson in
Writ of Right, yet this shall not defeat the usurpation in the Vicar-
age, because the Vicarage is not appendant to the Advowson, as it
is implied by the Case; for this is put to prove it. 17 E. 3. 51. b.
Curia. (It is to be admitted here, that the Patron of the Parson-
age is Patron of the Vicarage.)

Watf. Comp. 6. If an Advowson descends upon 2 Coparceners, and after an
Inc. Svo. 239 Usurpation is made upon the one who dies without Issue, by which her
240. cap. 15. Right descends to the other Coparceners, this shall defeat the usur-
cites S. C. pation; because she cannot have Action of Parcel of the Advowson be-
but adds ing seized of the Remnant. 17 E. 3. 22.
Quare.

See (L. c.) 7. If 3 Coparceners are of an Advowson, and the eldest presents in
pl. 3. — her Turn without Partition, and after a Stranger usurps upon the Turn
Watf. Comp. of the 2d, and afterwards the 3d presents in her Turn, this remits the
Inc. Svo. 2d again, so that she shall present again when it comes to her Turn;
239 cap. 15. for their Right is joint, and so the usurpation being avoided by one,
cites S. C. it is so for all. 12 D. 7. Kell. 1. Per Curiam.

If an Ad- 8. The Law would be the same tho' there was a Partition, because
vowson de- the Partition doth not sever the Inheritance; for they shall join in
scends to 4 Writ of Right, and the Partition is only as to the Possession. Con-
Coparceners, tra 12 D. 7. Kell. 1.
and they
make Parti-
tion to present by Turns, and the 3d presents when the 2d ought, for that Time the Presentation is
gone, but when it comes to his Turn again he shall present. 4 Lc. 222. pl. 356. cites 22 E. 4.
Per Brian.

9. A Manor with Advowson appendant descends to an Infant, who suffers
Usurpation, and after makes Feoffment of the Manor cum pertinentiis, the
Feoffee has no Remedy for the Usurpation. Br. Quare Impedit, pl.
162. cites 16 E. 3.

Jndgment 10. If a Recovery in Quare Impedit be within six Months against
in Quare the Incumbent, he is removed by the Judgment; so that if the Re-
Impedit coverer suffers the Incumbent by Agreement to continue Incumbent during his
brought Life, yet his Patronage is reverted by the Judgment. Per Coke, Dode-
after the 6 ridge and Haughton. Roll. R. 213. Trin. 13 Jac. B. R. Harris v.
Months, shall Austlin.

Right in Per Coke Ch. J. but he says he will not call it a Remitter. Roll. R. 214. in Case of Har-
the Patron. ris v. Austlin.

11. Pemberton took this Difference, where the King has a good Title, no
Recovery against his Clerk shall affect the King's Title; for he shall not
be prejudiced by a Recovery, to which he is no Party. If the King
have a defeasible Title, as by Usurpation, there if the rightful Patron re-
cover against the King's Incumbent, the King's Title shall be bound,
tho' he be not a Party; For his Title having no other Foundation than a
Presentation, when that is once avoided the King's Title falls together
with it. But tho' the King's Title be only by Usurpation, yet a Re-
covery against his Clerk by a Stranger, that has nothing to do with it,
shall not prejudice the King; Covin may be betwixt them, and the King
be triced. And North Ch. J. said, He was clearly of Opinion, That the
King's

King's Title by Usurpation should be *avoided* by a Recovery against his Clerk, tho' the Recoveror were a mere *Stranger*. Mod. 255, 256. Trin. 29 Car. 2. C. B. the King v. Thornborough and Studley.

* (M. c. 2) [Defeated by] *Remitter*.

See - Ann.
1st. at C. c.
2. — See
(M. c.) pl. 1,
2, 3, 8.
* There
is no Letter
to this in

[1.] 9. If a Man usurps upon me, and at the next Avoidance I usurp upon him, I am remitted to my ancient Right, and the usurpation upon me defeated. 17 E. 3. 37. b.

Roll, and the Pleas go on 9, 10 &c but to prevent Confusion, I have added a Letter, and alter'd the Number of the Pleas, yet so as the old Numbers appear at the same Time.

‡ So if the King usurps upon me, and I usurp upon him again, and present, and my Clerk is in by 6 Months, I am now remitted; And so it was adjudg'd in Dyer's Time, upon Fithherbert's Case; because his Clerk was legally in by 6 Months, and so a Remitter, which shall bind the King. Per Coke Ch. J. 3 Bullst. 38. Trin. 15 Jac. in the Case of Harris v. Aultin.

[2.] 10. If an Advowson be assign'd to 2 Daughters Coparceners in Chancery, and the Eldest after presents to the * next Avoidance, this shall be in her ancient Right, and not by usurpation, because the first Presentment of Right belongs to her; and this shall avoid the Assignment in Chancery. 17 E. 3. 30. 38. Adjudg'd.

* Watf.
Comp. Inc.
Svo 215.
cap. 15. cites
S. C. — but
the Doctor
supposes the
Presentment of the Eldest to be contrary to the Alligament.

[3.] 11. If a Man usurps upon me, and his Clerk is in by 6 Months, and after I bring a Quare Impedit against Patron and Incumbent, and they do not plead Plenarty by 6 Months, but I recover upon Non sum Informatus pleaded, I am by this remitted. M. 12 Ja. B. between Aultin and Harris. Per Curiam. Trin. 13 Ja. B. R. Same Case.

[4.] 12. So the Law would be tho' I was a Purchaser of the Advowson, and never presented before the usurpation. M. 12 Ja. B. Dubitatur. M. [Reports.] Tr. 13 Ja. B. R. Same Case.

If A. purcha-
ses an Ad-
vowson, and
before any
Presentation

had by him, another usurps upon A. and presents, and A. brings a Quare Impedit after the 6 Months, and a Plea of Non sum Informatus is enter'd for the Incumbent, the Advowson is hereby revested; for here was but a Remediless Right, and if you will not take Advantage of it, A. shall hereby have his Right again. A. had a Right, and having a Judgment to recover that to which he had a Right, his Right shall thereby be recovered. Per Coke Ch. J. 3 Bullst. 46. Trin. 13 Jac. B. R. in the Case of Harris v. Aultin.

[5.] 13. If I [am] seised of an Advowson, and after the Church holds the King presents by Usurpation, and 6 Months pass, and after I bring a Quare Impedit against the Incumbent of the King, who does not take Advantage of the Plenarty, but upon Non sum Informatus pleaded I recover, I shall thereby be remitted. M. 12 Ja. B. between Aultin and Harris. Tr. 13 Ja. B. R. Same Case.

The King's
Title being
by Usurpa-
tion, the Pa-
tron by this
Recovery
is remitted
to his ancient

Right, and Judgment accordingly. Brownl 165. Pasch. 12 Jac. S. C. by Name of Aultin v. the Bishop of London &c al — 3 Bullst. 36. S. C. by Name of Harris v. Aultin. — Roll. R. 210. S. C.

[6.] 14. But otherwise it would be, if I am a Purchaser of the Advowson, and the King usurps before any Presentment by me, and 6 Months pass before the Quare Impedit brought against the Incumbent, and after I recover in a Quare Impedit brought after the 6 Months pass'd against the Incumbent upon Non sum Informatus pleaded, without taking Advantage of the Plenarty, I shall not be remitted; because by the usurpation and 6 Months pass'd, I have but a Remediless Right, without any Action to recover it, and the King is not Party to the Action. M. 12 Ja. B. between Aultin and Harris. Tr. 13 B. R. Same Case.

Fol. 375.
3 Bullst. 36.
S. C. by
Name of
Harris v.
Aultin —
Roll. R. 210.
S. C.

[7.] 15. If A. seised in Fee of 6 Acres, to which an Advowson is appendant, dies seised, and this descends to B. and after A. is attainted of Treason by Act of Parliament, by which the King seises the 6 Acres, and he so seised, the Church voids, and J. S. usurps upon the King; and after the Act of Parliament is repealed, and B. restored, by which he enters into the 6 Acres, and after the Church voids; the said usurpation continues not defeated by the Repeal of the Act of Parliament, so that B. nor his Feoffee of the 6 Acres cannot maintain a Quare Impedit against J. S. who usurped before, if he disturbs them. D. 28 H. 8. 24. 153. Adjudg'd, as it seems, upon this Reason.

[8.] 16. If A. usurps upon B. a Purchaser of an Advowson in Fee, and the Clerk of A. is in by 6 Months, and after the Church voids, and B. presents C. and he thereupon is instituted and inducted; but A. brings Quare Impedit against B. and C. This is no Remitter to B. the Writ being brought within the 6 Months; for during this Time that the Clerk is to be removed by the Writ, this is not any Remitter. D. 14 Car. B. R. between *Harper and Wiersdale*. Adjudg'd per Curiam, in Writ of Error upon a Judgment in a Quare Impedit in Bank Intratur.

Roll. R. 214.
S. C. cited
Per Coke
Ch. J. in S. C. —

If Tenant in Tail of a Manor, unto which an Advowson is

9. If Tenant in Tail be disturbed, and where he ought to have a Quare Impedit he brings a Writ *De Droit D'Advowson*, and in this recovers, he shall be in by Force of the Tail, and not in Fee-Simple, notwithstanding the Gift of the Action be so; for where a Judgment and my Right do meet together, I shall be in in my Right. Per Coke Ch. J. 3 Bull. 46, 47. in the Case of *Harris v. Austin*. cites 4 E. 3. F. 19. by Wilby.

appendant, discontinue the Manor in Fee with the Advowson, and after the Discontinuor granteth the Advowson unto another in Fee, and afterwards doth re-infeoff the Tenant in Tail of the Manor, who dieth seised of the Manor; his Heir shall present unto the Advowson when it shall happen void; And if he be disturbed, he shall have a Quare Impedit, because he is remitted unto the Manor, and hath not Remedy to come at the Advowson. F. N. B. 35. (B) cites 29 H. 6. Quare Impedit 79.

S. C. cited
by Coke
Ch. J. as
mentioned
by Hufley;
but Coke
says, He has
the Book
but cannot
find the Case
there. 3 Bull.
46. in the
Case of *Harris and Austin*.

10. Where the King recited, *That whereas he had recovered an Advowson by Default in a Quare Impedit against a Stranger, which Advowson was lawfully appropriated to the Abbot long Time before this Recovery*, and after the King, by his Letters Patents reciting the Recovery, grants the Advowson to the Abbot and his Successors, it was adjudg'd that the Abbot should not be in by the King, but by his ancient Right in his Remitter according to their Appropriation, and not by the last Grant; because the Letters Patents recited, that they had other Right before the Recovery. Per Hufley Ch. J. 21. E. 4. 49. a. cites it as adjudged 32 E. 3.

Roll. R. 214.
S. C. cited
Per Coke
Ch. J. in S. C.

11. If the King usurps upon J. S. and afterwards by his Letters Patents grants this unto him again, this Judicial Patent, reciting his ancient Right, shall re-vest this in him, and he shall be in again in his ancient Right. As where he usurped by Presentation to the Advowson of a House of Religion, and afterwards, reciting the ancient Right of the Abbot, grants this Advowson again to him and to his Successors for ever; the Abbot, by this grant, is in again in his ancient Right. Per Coke, Ch. J. 3 Bull. 46. in the Case of *Harris v. Austin*. cites it as adjudg'd 2 H. 7. f. 17.

Br. Presentation. pl. 57.
cites S. C.
But Brooke
makes a
Quare.

12. If Husband and Wife present to an Advowson in the Right of the Wife, which is appendant unto a Manor of the Wife's, and afterwards the Husband aliens one Acre, Parcel of the Manor, with the Advowson in Fee to a Stranger, and dies, and the Stranger presents and aliens the Acre to another in Fee, saving the Advowson to himself, and then the Church voids, the Wife shall present; and if she be disturbed, she shall have an Assise of Darrein

Darrein Presentment, because the Advowson was severed from the Acre; but if the Advowson were appendant to the Acre, then the Wife ought to recover the Acre before the present to the Advowson. F. N. B. 32. (K)

13. If a Man traverse an Office found of a Manor, unto which an Advowson is appendant, and upon the Traverse * the King leases the Manor unto him who tendered the Traverse, without mentioning the Advowson, and afterwards the Church voids, he who tendered the Traverse shall have the Presentment, if the Traverse be found for him. F. N. B. 34. (P)

* For in that Case the Lease amounts to a Restitution; but if the King leases a Priory alien,

and leases the Priory to Farm during the War, without mentioning the Advowson, the King shall have it. F. N. B. 34 (P) in the Notes there. (f) cites 29 E. 3. 18. (or 98)

14. Where an Infant has an Advowson by Descent, and the Church voids, and he, who hath Title Paramount, usurps and presents unto the same Church, and the 6 Months do pass; he is remitted by this Usurpation, and the Infant out of Possession, and without Remedy by that Usurpation. F. N. B. 35. (M)

S. C. cited Le. 331. Trin. 30 El. B. R. in the Case of Wade v. Prethall.

15. Two several Purchasers are of the Reversion in Fee of an Advowson after a grant of the next Avoidance. An Avoidance happens, and by Confe-deracy one of the Purchasers presents in the Turn of the Grantee of the next Avoidance; but upon a Bill by the other Purchaser, 'twas decreed, that no Benefit should be had by this Usurpation, so as to defeat the Plaintiff's Title, nor should it be given in Evidence against him at a Trial at Law, which was then order'd. N. Ch. R. 4. Pasch. 3 Car. Markhall v. Hide.

(N. c) * Quare Impedit. Of what Thing it lies.

1. A Quare Impedit lies of a Donative, and the Writ shall be Quod permittat ipsum presentare ad Ecclesiam &c. and declare the Special Matter in his Declaration. Co. Litt. 344.

* A Quare Impedit is in the Nature of a Trespass, and is all one with a Darrein Presentment. The Writ

of Right of Advowson complains of the Deformance of the whole Advowson; The Quare Impedit and Darrein Presentment complain only of a Chattel, viz. of the present Avoidance. Jenk 13. pl. 23. — On a Writ of Error upon a Judgment in a Quare Impedit brought out of Ireland, Exception was taken amongst others, That the Writ of Error was Quia cum &c. per breve nostrum de Quare Impedit; Whereas the Words of the Writ are, Quod permittat ipsum presentare &c. And there is no such Writ as Quare Impedit; But it was answered, That Bracton 246, 247. distinguishes between the Writs of Quod Permittat and Quare Impedit, That Quod permittat was either an old antiquated Writ, or taken away by some old Statute now lost, and cited the Statute 13 E. 1. cap. 5. and Maynard's E. 2. fol. 300 Mich. 10. E. 2. to prove that there never was such a Writ as Quod permittat; That in all Judicial Records it is called a Quare Impedit, and so in Writs of Enquiry, and so in Writs to the Bishop for admitting Clerks, and cited several other Books. And per Cur. as to the Calling the Writ Quare Impedit instead of Quod permittat, the Fact is, That there was formerly a Writ of Quare Impedit, now out of Use; And the Writ Quod permittat is now erroneously called by the Name of Quare Impedit; This Error has prevailed in judicial Writs and Acts of Parliament, but never yet in Writs of Error; However, it being become now a legal Name, the Writ of Error ought not to be disallowed for using of it; 10 Mod. 308. &c. Pasch. 1 Geo. B. R. the King v. the Bishop of Meath.

2. 13 E. 1. cap. 5. Sect. 4. Enacts, That * from henceforth † Writs shall be granted for ‡ Chapels, Prebends, ¶ Vicarages, Hospitals, Abbies, Priors, and other Houses which be of the Advowsons of other Men that have not been used to be granted before.

* It appear-eth here, and by 6 E. 3. that before this Act Writs did

not lie de Capellis Prebendis &c. and yet it is adjudged in 14 H. 3. which was long before this Statute that a Quare Impedit did lie of a Chapel; and it was resolved in Parliament, Hill. 19 H. 3. Quod nulla Assisa ultimæ Præsentationis capiatur de Ecclesiis Prebendis, nec de Prebendis; but now this Act hath made it clear, and the Writ shall be Ad Capellam. & 2 Inst. 363, 364.

† That is, Writs of Advowson, Quare Impedit, and Assise of Darrein Presentment, which in this Act had been named before 2 Inst. 364.

‡ A Quare Impedit lay of a Chapel at Common Law. F. N. B. 33 (C) in the Notes there (e) cites 24 H. 3. Quare Impedit 183. — And so it did of a Prebend. F. N. B. 33 (C) in the Notes there (e) cites 15 R. 2. Brief 643

As to the Word (Chapel) When the Question was, Whether it were Ecclesia, aut Capella Pertinens ad Matricem Ecclesiam, the Issue was, Whether it had *Baptisterium & Sepulturam*; For if it had the Administration of Sacraments and Sepulture, it was in Law adjudged a Church. Trin. 20 E. 1. in Banco Rot. 17. in Quare Impedit Ric' de Smith's Case. Mich. 21. E. 1. in Banco. Rot. 1. Hertf Prior de Clug Case. Hill. 8 E. 1 in Banco, Roger de Bigod, and Count de Noiffie's Case. Hill 8 E. 2. coram Rege Cornub. pro Capella Sancti Berione. A Capella venit Capellania; Rot. Cart. 26. Nov. An. 28 H. 3. in Cart' Fact' Will. Oxon. Episcopo & Capellan' ut pater Mich 32 E. 1. Coram Rege Gloc', Capellania sancti Oswaldi Prioratus, Sancti Oswaldi de Gloc' quæ est de Libera Capellania Nostra. 2 Infl. 363.

If a Patron of a Chapel present unto it by the Name of a Church, and the Clerk be instituted and inducted thereunto &c. it hath lost the Name of a Chapel 2 Infl 364.

¶ Quare Impedit was brought by a Prebendary of an Avoidance of a Vicarage, which was appendant to his Prebend, Quod nota Br Quare Impedit. pl. 95. cites 24 E. 3. 26 — Br. Presentation. pl. 26. cites 24 E. 3. 26. — S. P. Br. Quare Impedit. pl. 156. cites F. N. B. fol. 32, 33.

It was objected, That 3. Quare Impedit lies of an Archdeaconry. Br. Quare Impedit. pl. 100. cites 24 E. 3. 42.

Quare Impedit does not lie of an Archdeaconry-ship; For it is not local, nor any Indenture made thereof, but it is only a Matter of Function, but it was not allowed: For an Archdeacon hath Locum in Choro; And by the Statute a Quare Impedit lies of a Chapel, and by Equity thereof, of a Prebend. Le. 205. Trin. 31. Eliz. C. B. Smallwood v. the bishop of Lichfield — Ow. 99. S. C. by Name of Sale v. Bishop of Lichfield — The King shall have a Quare Impedit of the Sub-Deaconry of York, which is voided when the Temporalities of the Archbishoprick were in the King's Hands. F. N. B. 34. (G)

* S. P. where there was a Composition, 4. A Quare Impedit lies of a * Chantery of Saint T. in O. Br. Quare Impedit. pl. 5. cites 9 H. 6. 16.

that if the Patron did not present within one Month, that then the Ordinary should present. Br. Quare Impedit. pl. 131. cites 13 E. 4. 3. — So of a Chantery, which is Donative by Letters Patents F. N. B. 32. (C) — A Quare Impedit of a Chantery ought to shew in what Church or Chapel the same is. F. N. B. 33. (C) in the Notes there (c) cites 12 H. 4. 19. See Lib. Entr. 499.

S. P. F. N. 5. A Man may have Writ of Right of Advowson de Advocacione B. 35. (A) — Medietatis Ecclesie, but not Quare Impedit; For this is Quod ipsum None shall presentare ad Ecclesiam, so that this is all for the Presentation only. Br. Have Quare Impedit pre- Quare Impedit. pl. 10. cites 33 H. 6. 11.

Medietatem Ecclesie, but when there are 2 several Patrons, and 2 several Incumbents of the Church within one and the same Vill, so that the one Patron has a distinct and separate Advowson of one half of the Church, and his Incumbent has a distinct and separate Half of the Tithes, and other Ecclesiastical Profits within the same Vill; So of the other Patrons, Mutatis Mutandis, and in this Case the Advowson and the Church are severed in Right and in Possession; But when there is only one Incumbent, tho' the Advowson is divided and severed in several Hands, yet there never shall be a Quare Impedit Presentare ad Medietatem seu tertiam Partem Ecclesie &c. and the Reason of this Diversity is manifest; For every Quare Impedit is in the Possession, and respects the Church which belongs to the Incumbent. Resolved. 10 Rep. 135. b. Trin. 10 Jac. C. B. Smith's Case.

F. N. B. 39 (G) says, It seems (within the Writ [there] above-mentioned, that) a Man shall have a Quare Impedit quod permittat ipsum presentare ad tertiam Partem Ecclesie; and that it seemeth to stand with Reason; For a Consolidation may be made of 3 Advowsons, and every Patron to present by Turn, and then every one hath a Right to a third Part.

6. Quare Impedit lies of a Priory, or of an Abbey. F. N. B. 33. (F)

7. A Man shall have a Quare Impedit of an Hermitage; And a Writ to put him into corporal Possession. F. N. B. 34. (E)

Quare where this Case is; For I do not observe, that it is warranted by either of the Books cited, nothing being there said of a Church in Antient Demesne. 8. It will lie for a Disturbance to present to a Church in Wales; it will lie also for a Disturbance to present to a Church in Antient Demesne, tho' it concerns the very Possessions in Antient Demesne; For the Common Law, being as antient as those Privileges which Men have in their Lands held in antient Demesne, will not suffer that there should be a Failure of Justice, under Pretence of any Manor of Privilege whatever. 3 Nel. a. 35. pl. 3. cites Hob. 48. Cox v. Barnsby. 5 Rep. Alden's Case. S. P.

(O. c) *Who shall have Quare Impedit.*

1. **T**HE Grantee of a next Avoidance shall have a Quare Impedit against the Patron who granted it. 39 H. 6. Quare Impedit. 95. Per Curiam, and said to be oftentimes adjudged.

See Br. Quare Impedit. pl. 162. S. P. admitted. And

Br. N. C. 4 E. 6. pl. 410 by Name of Ogle v. Harrison. — A. grants that whensoever the Church becomes void, that B. and his Heirs shall nominate a Clerk to the Grantor and his Heirs, and that he and his Heirs shall present him over to the Ordinary, and the best Opinion was, That every of them shall have Quare Impedit, if B. presents to the Ordinary, A. shall have Quare Impedit, & e contra, And tho' the one has a Writ to the Bishop, this shall not oust the other of the Possession Mo. 49. pl. 147. Patch. 5 Eliz. Anon.

If the next Avoidance be granted to 2, and one, before the Church avoid, Releases to the other, the Releasee may have Quare Impedit in his Name alone. Adjudged and affirmed in Error. Mo. 407. pl. 667. Trin. 39 Eliz. Lewis v. Bennet.

2. Before the Statute of 27 H. 8. of uses, if Cesty que Use of a Manor, to which an Advowson was appendant, presents to the Church when it becomes void, and this by Sufferance of the Feoffee, yet if he be disturbed, he cannot maintain a Quare Impedit; For he has not any Estate at Will. 17 H. 7. Kell. 42. b.

Quare Impedit by the King, and made Title, because J. N. who was Patron was outlaw'd,

and the Church voided, and the King presented &c. The Defendant said that before the Outlawry, the Patron intressed 3 to his Use in Fee, and the Church voided after the Outlawry, and he presented at the Will of the Feoffees, and therefore Writ awarded to the Bishop for the King: And so it seems, that upon Voidance Cesty que Use has a Chattel, and therefore it shall be forfeited by Outlawry, Quare if he had presented Nomine Feoffati. Br. Presentation. pl. 16. cites 3 H. 5. 3.

3. Quare Impedit lies for the Bishop, who is disturbed, to have Presentation to the Prebend; So for the King, the Temporalities being in his Hands. Br. Quare Impedit. pl. 94. cites 24 E. 3. 26.

Br. Presentation pl. 25. cites S. C. And adds, That in

some Places the Dean shall present to some Prebends.

4. Quare Impedit by the King of the Vicarage of B. and found against him, and the Defendant prayed Writ to the Bishop; and Thorp J. took Time to advise; For he doubted whether a Layman could be Patron of a Vicarage, but a Parson or Parson imparsoned. Br. Quare Impedit pl. 105. 39 E. 3. 33.

5. Dissessee of a Minor, to which an Advowson is appendant and voids, may have this Writ. F. N. B. 33 (Q)

6. The Issue in Tail shall not have Formedon of an Advowson in Gross, aliened by his Ancestor, but Quare Impedit at the next Avoidance in his Turn. Br. Quare Impedit. pl. 60. cites 14 H. 4. 33.

7. Where a Prior was Parson imparsoned, and J. N. presented his Clerk to the same Church, who was Admitted, Instituted, and Inducted, by this the Prior is not out of Possession; For he cannot have Writ of Right, nor Quare Impedit; For he is in Possession, and so he shall have no Action, but Trespass, or Spoliation in the Spiritual Court, because the Church is adjudged always full of him. Per Prifot. Br. Presentation pl. 36 cites 39 H. 6. 20.

Put as to a Stranger who has just Title to present, it shall be adjudged void; For Parson imparsoned cannot plead Plenarty, but

it is always full as to him who no Right has, and the Admission, Institution, and Induction supposed is not to the Purpose, if he who presents has not Title; But the Prior continues Parson, and the Opinion of the Court was, that the Church is always full of the Prior, and that the other who was Admitted, Instituted and Inducted, was not Parson. Ibid. — Br. Quare Impedit pl. 114. cites S. C. — Ibid. pl. 111. cites 33 H. 6. 11. S. C.

8. 7 H. 8. 4. Enacts that Recoverers of Maners &c. and Advowsons, their Heirs and Assigns, shall have Quare Impedit for an Advowson, if upon a Voidance any Disturbance be made by a Stranger, as the Recoverers might have had, albeit they were never seised thereof by Presentation.

9. If the *Patron sells the Fee* of the Advowson *after the Avoidance*, neither he nor his *Vendee* can have a *Quare Impedit*, because the Avoidance makes it a *Chose en Action*; so that it does not pass to the Grantee, and the Grantor has destroy'd his Action by his Conveyance, and so none can have it. Cro. E. 811. Hill. 43 Eliz. C. B. Leak v. Bishop of Coventry and Babington.

And 244.
pl. 257 S. C.
by Name of

10. *Quare Impedit* lies for *Executors*. 4 Le. 15. pl. 53. Mich. 32 & 33 Eliz. Smallwood v. The Bishop of Coventry and Litchfield.
Sale v. the Bishop of Coventry and Marsh. — Cro. E. 207. S. C. — 4 Le. 205. S. C. — Ow. 99. S. C. by Name of Sale v. the Bishop of Litchfield.

It was said that if Husband has an Advowson in Right of the Wife, and the Church becomes void and the Husband dies, the Executors shall have the Presentation; and that there are many Books in that Point; and Anderson said he knew that well, but that he doubted of the Law in that Case. Goldsb. 57. pl. 10. in Specot's Case. — See (P. c) pl. 1.

11. *A. presents B.* and before Institution *revokes* that, and *presents C.* *Quare Impedit* lies for C. Agreed by all. Latch. 248. Hill. 22 Jac. in Case of Evans v. Afcough.

12. *He that has the Nomination* is only Patron, and shall have a *Quare Impedit* or a Writ of Right, as his Case requires. Dod. of Adv. 66. Lect. 12.

(O. c. 2) One or several, and where two shall join.

But now the common Opinion is, 1. **B**Y the Register the King shall join with another Person in a *Quare Impedit*. F. N. B. 32. (G.)
that the King shall have the whole Presentment alone, and alone shall have the Action; but methinks that it stands with Reason, that the King and the other join; as in a Popular Action the Party shall sue for the King and for himself, and the Words of the Writ are, *Qui tam pro Domino Rege, quam pro seipso sequitur &c.* and that in an Action of Debt &c. and by the same Reason the King may sue for himself and for the Party. And the common Experience is, that a Man shall hold Lands in common with the King, and also Chattels; and by the same Reason they may have the Presentment or Advowson in common. F. N. B. 32. (G.)

2. If a Man has an Advowson, and the Church voids, and two Strangers do severally present their Clerks to the Bishop to that Advowson; the Patron shall have diverse *Quare Impedit*s against them, if he will, and shall have several Judgments, and shall recover several Damages for their several Presentments and Wrongs done. F. N. B. 35. (N.)

Note, They may waive the Partition of the Advowson and the Allotment thereon, and present by a new Partition. F. N. B. 36. (D) in the Notes there (a) cites 21 E. 3. 31. 13 E. 3. Qua. Imp. 58. 33 E. 3. Qua. Imp. 196. by Skipw.
3. If Coparceners make Composition to present by Turns, and a Stranger usurps and presenteth in the Turn of one of them, yet if they will, they may join in a *Quare Impedit* against the Stranger, notwithstanding the Composition. F. N. B. 36. (D.)

(P. c) What Persons may have it upon the Disturbance.

Quare Impe- 1. **I**F the Baron be disturbed to present to an Advowson which he has in Right of his Wife, and dies, the Feme shall have a *Quare Impedit* of this Disturbance. 3 E. 3. *Quare Impedit* 57. 3 H. 5. *Quare Impedit* 71. admitted.
dit was brought by F. N. and counted of Agreement to present by Turn between 3 Sisters of the Advowson appendant, and that he married the one, and this is the Turn of his Feme &c. and the Defendant demanded Judgment of the Writ, because it is in June Uro-

ris, who is in full Life not named; and yet the Writ awarded good, because *nothing is to be recovered but the Presentment and not the Advowson*; and if Writ to the Bishop be awarded against the Baron, yet by this the Feme is not out of Possession; for she is not Party to the Judgment, and also she is aided by the Statute of Westminster 2. Br. Baron and Feme, pl. 28. cites 50 E. 3. 13.

If Baron be seised of an Advowson in *Fure Uxoris*, As in Dower, and the Church voids, and the Feme dies before Disturbance, and after the Baron is disturb'd, he shall have this Presentation. Per Thirne quod non negatur. Br. Presentation, pl. 15. cites 54 H. 4. 12.

2. Guardian in Socage of a Manor, to which an Advowson is appendant, if he be disturb'd, shall have a Quare Impedit in his own Name, tho' he cannot make Account thereof. Time of E. 1. fol. 132, adjudged.

Fol. 136.
If there be Guardian in Socage of a

Manor, unto which an Advowson is appendant, and the Church voids, the Heir shall present, and not the Guardian, because he cannot account for the same. F. N. B. 33. (T)—It seems the Presentment ought to be in the Name of the Heir, and yet a Guardian in a Quare Impedit against him may make Title against the Stranger in Right of the Heir, and also have a Writ to the Bishop thereupon, but he cannot maintain Quare Impedit. F. N. B. 33. (T) in the Notes there (a) cites 29 E. 3. 5 14. 22 27 E. 3. 89. a. 8 E. 2. Presentment 10

3. One Coparcener, upon Agreement to present by Turn, shall have Quare Impedit against the other who disturbs him in his Turn; quod nota. Br. Quare Impedit, pl. 139. cites 22 E. 4. 8.

So where Jointenants make Partition by Deed to present

by Turn, and one of them, or the Grantee of one is disturb'd in his Turn, he may bring Quare Impedit. See 1 Salk. 43. Mich. 11 W. 3. B. R. Bishop of Salisbury v. Philips.—And 12 Mod. 521. S. C.

4. Three Jointenants were seised of certain Land to which an Advowson was appendant, and the one presented alone, and his Clerk admitted and in, and after he, who presented him, died, and after the Incumbent died, and the other two who survived presented and were disturb'd, and brought Quare Impedit, and shew'd this Presentment for their Title, and admitted. Brooke says, And so see that the Presentation of the one Jointenant does not put his Companion out of Possession, and adds a Quære if it had been an Advowson in gress, and quære if they had been Tenants in common. Br. Quare Impedit, pl. 3. cites 27 H. 8. 13.—But by P. 37 H. 8. Horwood the King's Attorney was clear in Opinion, that such Presentment of the one puts the others out of Possession; and Bromley and Hales Serjeants contra.

But by 7 Anne, cap. 18 S. Usurpation shall not displace the Estate of the Patron.

[P. c 2] Against whom. By what Persons.

[1.] 3. THE Chapter may have it against the Dean of their several Possessions. 40 E. 3. 28. v.

Watf. Comp. Inc. Svo. 441. cap. 22. cites S. C.

[2.] 4. A Prior may have it against the Abbot. 40 E. 3. 28. b.

The Founder of a Priory

shall have a Quare Impedit against the Subprior and the Convent, if they disturb him, to present to an Advowson which belongeth to the House, if it voids during the Vacation, where the Founder ought to have the Temporalities during the Vacation F. N. B. 34. (O) cites p. 9 E. 3.—The Patron of an Abbey Presentative brought a Quare Impedit against the Superior (Sub-prior) and Convent. F. N. B. 34 (O) in the Notes there (c) cites 11 E. 3. Quare Impedit 157. 18 E. 3. 15.—S. P. F. N. B. 38. (G) cites Trin. 31. E. 1

3. Where Guardian presents in Right of the Heir, whether the Heir has Right or no Right, he, who will have thereof Quare Impedit, shall have it against the Guardian, and not against the Heir. Br. Quare Impedit, pl. 47. cites 7 H. 4. 25. 37.

4. Where the King or the Pope presents, Quare Impedit shall be against the Incumbent alone. Br. Quare Impedit, pl. 47. cites 7 H. 4. 25. 37.

S. P. For there those Patrons

cannot be impleaded. Br. Quare Impedit, pl. 149 cites 12 H. 8. 12 — Quare Impedit by the King against the Incumbent alone, who pleaded, which was found against the Abbot, and it was pleaded in Archa, ecclesiastica

because the Patron was not named in the Writ; but because the Writ was admitted, it was awarded that the Plaintiff Eat inde fine die. Br. Quare Impedit, pl. 44. cites 3 H. 4. 25

5. The Master and Confreers of D. presented the Master, and the Master and Confreers of E. brought Quare Impedit against the Master by a strange Name; and it lay well, and they recovered per Judicium; for it was a void Presentment. Br. Quare Impedit, pl. 149. cites 12 H. 4. 12.

6. When a Man disturbs and dies, Quare Impedit lies against his Heir and the Incumbent, because he shall make Title and save his Possession: But by some, in Quare Impedit when the Patron dies as above, and the Plaintiff proceeds against the Incumbent, this shall not bind the Heir of the Patron, because he is not Party; and there is no Reason to give Quare Impedit against the Heir, for he does not make any Disturbance; and also the Plaintiff shall recover Damages against him, which is not Reasonable where he does not make any Disturbance. Br. Quare Impedit, pl. cites 9 H. 6. 30.

S. P. for by
Fortescue,
Plenary by
6 Months is
no Plea un-

7. Quare Impedit lies well against Parson imparsonce; for the Church is void, having Regard to Strangers. Br. Plenary, pl. 6. cites 38 H. 6. 20. Per Priot and Fortescue.

less he says of his own Presentment, and Parson imparsonce is not in by the Presentment of any. Br. Quare Impedit, pl. 111. cites S. C.

8. One Jointenant or Tenant in Common shall not have a Quare Impedit for the Advowson which they have in Common or in Jointure, if one of them present solely against his Companion. F. N. B. 34. (U)

9. If A. wrongfully by Usurpation present B. and B. is received, and afterwards A. having gained the Patronage grants the Patronage to R. S. Walmisley J. thought the Quare Impedit shall be brought against R. S. which Anderson Ch. J. doubted. 2 Le. 58. Mich. 32 Eliz. C. B. in Case of Hall v. Bishop of Bath.

See (N. c)

[P. c. 3] Of what Thing.

[1] 5. If there be a Presentment to the Appropriation by a Stranger, and the Clerk inducted, yet the Patron of the Appropriation cannot have Quare Impedit, because he cannot be put out of Possession. 44 E. 3. 33. b.

[2] 6. A Quare Impedit lies of a free Chapel which a Man has by the Patent of the King, if the Sheriff will not put him in Possession. 14 H. 4. 11. b.

Watf. Comp.
Inc. 8vo. 430.
cap. 22. cites S. C.

[3] 7. A Quare Impedit lies of an Hospital. 18 E. 3. 1.

Br. Quare
Impedit, pl.
140. cites S.
C. per Brian,
that having
named a Dis-

[4] 8. If it be brought against the Incumbent and B. as Patron, it is no Plea for the Incumbent that C. presented him, upon whose Presentment he was inducted; For he has named a Disturber, and complained of a Disturbance by him. 22 E. 4. 44. b. (R. Quare this.)

turber and an Incumbent the Writ is good; For the Plaintiff is not disturbed by C. but by B. and there is no Reason to have Action against him who does no Wrong to the Plaintiff, and therefore was held good. And Brooke says, so see that the Writ is good against Disturber and Incumbent, though the Disturber is not Verus Patronus.

Watf. Comp.
Inc. 8vo. 430.
cap. 22. cites
S. C.

[5] 9. A Quare Impedit lies of a Deanry by the King, though it be elective by others. 17 E. 3. 40. adjudged.

(Q. c) Of what Things, and *for what Causes* it may be brought. And what will * be sufficient Seisin to maintain it. In what Cases it is † necessary to have † Seisin. * See (R. c) † See (S. c)

1. If a Man creates a Church at this Day, and is disturbed to present, he cannot maintain Quare Impedit, because he cannot allege a Presentment. Dubitatur. 20 E. 4. 14. b. Contra 21 E. 4. 3. Warf. Comp. Inc. Svo. 442. cap. 22. cites S. C. — A Man shall not have

Quare Impedit if he cannot allege a Presentment in himself or in his Ancestors, or in another Person, from whom he claimed the Advowson, and that in his Count, unless in special Cases; As if a Man at this Day * erect a Church parochial by a Licence of the King or other Chantry, which shall be presentable &c. If he be disturbed to present to the same, he shall have a Quare Impedit, without alleging of Presentment in any Person, and shall count upon the special Matter. F. N. B. 33 (H). — Warf. Comp. Inc. Svo. 442. cap. 22. cites S. C. And so, the Doctor says, he supposes the Law is now taken to be. — * S. P. if he be disturbed to present at the first time, he shall have Quare Impedit without alleging Presentment. 2 And. 50. in pl. 37. in Case of Sir Thomas Cecil v. Hall.

2. If Advowson be granted by Parliament, he shall have Quare Impedit Presentare upon the Matter. 21 E. 4. 3. b. 16 H. 7. 8. Be Quare Impedit, pl. 138. cites

21 E. 4. 1. 3. per Choke. — Warf. Comp. Inc. Svo. 442. cap. 22. cites S. C. — S. P. that he shall have Quare Impedit without alleging Presentment before. 2 And. 50. in pl. 37. cites S. C.

In Quare Impedit to prete t to the Church of St. Andrew Wardrobe, Plaintiff declared, that by the Act 22 Car. 2. for re-building London, it was enacted, that the Parishes of St. Andrew Wardrobe, and St. Anne Black Friars should be united, and St. Andrew Wardrobe to be the Church to be rebuilt, and the Parish Church, and the Patrons to present by Turns, and the first Presentation to be by the Patron of the Church the Endowment of which was of the greatest Value, which was that of St. Andrew, that July 25 Car. 2. the Incumbent of St. Andrew Wardrobe died, and that the King as Patron presented J. S. which was the first Avoidance after the Act; that J. S. died, whereby it belonged to the Plaintiffs (Patrons of Black-Friars) to present as in their Turn, and that the Defendant hindered them; The Bishop claimed nothing but as Ordinary, and Blake the Defendant demurred to the Declaration, for that it did not appear that the Plaintiffs, or any by whom they claimed had presented to, or ever were in Possession of the * Church of Black-Friars; and that such a Presentation must always be alleged in a Qua. Imp. As to this it was said, That this being an Union by Act of Parliament, which appoints that the Patrons shall present by Turns, and that the greater Value should present first, this was not necessary in this Case; to which the Court said, That the Act did not intend to restore a Title to one who had lost it by Usurpation, but to have the Title as it was before; and perhaps here might have been Usurpation before this Act made; and if so, then the Usurper, and not the Plaintiff, is Patron within the Act till they had regained their Right by a Writ of Right of Advowson, and thereupon it was adjourned to be further argued. But Judgment was afterwards given for the Plaintiff upon this Point, and affirmed in Error in B. R. but reversed in the House of Lords on a Writ of Error. 3 Lev. 435. Hist. 7. W. 3. C. B. Reynoldson & al. v. Bishop of London and Blake. — * The Word is (Vicarage) but in this Case of Union by Act of Parliament, and the Rectory being appropriate, the Court said, they would intend it a Church now within the Meaning of the Act, and therefore I thought it better here to use the Word (Church)]

3. If the King be intitled to the Advowson by Office, he shall have Quare Impedit without Presentation. 21 E. 4. 16 H. 7. 3. Be Quare Impedit, pl. 138. cites 21

E. 4. 1. 3. and this as well to an Advowson in Gross as to an Advowson Appendant, and by all the Inti- tices the King is Patron by the Office till it be traversed in Chancery. — Warf. Comp. Inc. Svo. 442. cap. 22. cites same Cases.

4. A Recovery in Quare Impedit against B. and Damages for two Years because the Church was full of C. is a good Title in a Quare Impedit after the Death of B. without alleging Presentment. 42 E. 3. 8. b. Warf. Comp. Inc. Svo. 443. cap. 22. cites S. C. — See (R. c) pl. 3.

5. But in this Case, if he had once presented, and the Church full after the Recovery of his Presentment, this Recovery is not sufficient Title. 42 E. 3. 8. b. Warf. Comp. Inc. Svo. 443. cap. 22. cites S. C.

*Both Translations are (Disturb'd) but the French is (Dissolv'd.)

6. If an *Abbot* has been *Parson imparsoned* Time out of Mind, and afterwards the Abbey is **Dissolv'd*, he of whom the Advowson is holden shall present, and if disturbed shall have a Quare Impedit, without alleging of any Presentment in the Count, but shall shew the special Matter. F. N. B. 33. (K)

7. If a *Man* be *disseised* of a Manor unto which an Advowson is appendant, and the *Advowson* becomes void, the *Disseisee* may present and have a Quare Impedit, *tho' he has not entered* into the Manor. F. N. B. 33. (Q.)

Sec (Q c)

(R. c) *What* will be *sufficient Seisin* to maintain this Writ.

1. **T**HIS Writ is all in the Possession, and the Presentment is the Possession. 21 E. 4. 2.

2. If my Clerk be Instituted and not Inducted, when it voids again I may maintain this Writ. 38 H. 6. 15. b. by Back.

* Fol. 377.

Watf. Comp.

Inc. Svo. 443.

cap. 22. cites

S. C. ———

Br. Quare Impedit, pl. 142.

cites S. C. ———

† F. N. B. 36 (D.) ———

See (Q c) pl. 4.

3. A Recovery in Quare Impedit, without alleging Presentment, is not *sufficient, because it lies against the Deforcceor, who claims nothing in the Patronage. † 39 H. 6. 25. b.

Br. Quare

Impedit, pl.

80. S. P.

cites 21 H. 6. 44.

4. A Presentment by Lapse to the Ordinary is sufficient Seisin. 9 H. 6. 24. b.

5. A Presentment before Time of Limitation is not sufficient; because it is not triable. 20 E. 4. 15. 42 E. 3. 4. b. Admitted. 17 E. 3. 11. 14. b.

Watf. Comp.

Inc. Svo. 442.

cap. 22. cites

S. C. ———

But if the

King be

disseised of an Advowson which has been ever held appropriated, he shall have Quare Impedit without alleging any Presentment. Watf. Comp. Inc. Svo. 442. cap. 22. cites 17 E. 3. 10. b. 20 E. 4. 15.

6. If an Abbot had an Impropriation Time whereof Memory &c. and after the Abbey is dissolved, this Perpetual Incumbency is not sufficient Seisin for the Patron; for it is not Presentative. Dubitat. 20 E. 4. 15.

Quare Im-

pedit by the

King, and

counted how

the Bishop of

St. Davids was Patron of a Benefice in the Church of A. called the Prebend of G. and that such a Bishop pre-

sented to it by Name of Prebend, and after the Bishop by Assent of his Chapter, and the Chapter of A. made it

a Treasury by Name of Dignity, and annex'd it to the Bishoprick; and after the King rehearsing the Ordinance,

Ratified, Granted and Confirmed the same Thing accordingly, and that it should be named Treasury ac-

cordingly, and that J. B. Incumbent there died, by which it voided, and remained void till the Tem-

poralities came into the Hands of the King by the Death of T. G. Bishop there, and yet is void, and so it be-

longed to him to present. And so see that a Voidance which belongs to a Bishop, who dies before he

presents thereto, shall afterwards belong to the King, quod nota; and the Defendant demurr'd, be-

cause it was never put in Ure by the Name of Treasury by any Bishop, therefore the King ought to have made

Title by Name of Prebend and not of Treasury; for during the Life of J. B. Incumbent of the Prebend, the

Bishop is only a Patron as of Prebend and not as Treasury, till a Bishop has put it in Ure by such

Name; & non allocatur; but Writ to the Bishop awarded for the King. Br. Quare Impedit, pl. 42,

cites 50 E. 3. 26. ——— Br. Presentation, pl. 10. cites S. C. ——— Br. Alienations, pl. 3. cites S. C. ———

Watf. Comp. Inc. Svo. 442. cap. 22. cites S. C.

7. If a Man presents to a Prebend, and after the Name is changed, yet the said Presentment is sufficient Seisin to maintain a Quare Impedit upon the new Name. 50 E. 3. 26.

8. If Presentment be to an Advowson, and after it is Appropriated, and a Vicarage made in the same Church, the Presentment aforesaid is sufficient to have Quare Impedit for the Vicarage, without other Presentment for the Vicarage. 50 E. 3. 27. Br. Quare Impedit, pl. 42. cites S. C.

9. If Presentment has been to two Churches, and after they are united, he who is made Patron by the union may have Quare Impedit this, without other Presentment. 50 E. 3. 27. Br. Quare Impedit, pl. 42. cites S. C.

10. The same Law where a Church Parochial is made Collegial. 50 E. 3. 27. Br. Quare Impedit, pl. 42. cites S. C.

— Pl. 10. in Roll is plac'd after the Sub-Division of (In whom) but it seems more properly plac'd before it, as Here it is done.

In whom.

11. The Presentment of the Grantee of the next Avoidance is sufficient Title for the Patron in Fee to have this Writ. * 9 H. 7. 23. Co. 5. Countess of North. 97. b. adjudged. * Br. Quare Impedit, pl. 122. cites S. C. — Watf. Comp.

Inc. Svo. 444. cap. 22. cites S. C. — S. P. For he made it in Right of the Grantor, and therefore it shall serve for him to make Title in Quare Impedit. 5 Rep. 97. b. Mich. 39 & 40 Eliz. C. B. the Countess of Northumberland's Case. — Mo. 456. S. C. — And. 48. S. C. — Cro. E. 518. S. C. — See pl. 15. infra.

12. It ought to be alleged in the Plaintiff, or in him whose Estate he has. 21 E. 4. 2. b.

For whom.

13. A Grantee of the Next Avoidance presents, and after the Heir of the Grantor grants the next Avoidance, the said Presentment is sufficient for the Grantee. 9 H. 7. 23. Br. Quare Impedit, pl. 122. cites S. C. —

Watf. Comp. Inc. Svo. 445. cap. 22. cites S. C.

14. So if Grantee of the Next Avoidance presents, and after Grantor grants the Advowson to A. who grants it to B. the said Presentment is sufficient for B. in this Writ, without alleging Presentment in the Grantor or A. Dy. 1. 2. Ba. 106. 18. Watf. Comp. Inc. Svo. 445. cap. 22. cites S. C.

15. The Presentment of Grantee of Next Avoidance is sufficient for Grantor and his Heirs. Co. 5. 97. Adjudged. See pl. 11. Supra — See (Uc) pl.

3. 4. Infra. — In Quare Impedit the Plaintiff counted that his Ancestor was seized of the Advowson and his Clerk in, and after he granted the Advowson to J. S. for Life, the Church voided, J. S. presented, and his Clerk in, and J. S. died, and after the Church voided, by which the Plaintiff as Heir, the Ancestor presented, and the Defendant disturbed him, and it was held, That he shall allege the one Presentation and the other; For the Presentation of the Tenant for Life does not make Title to the Plaintiff, nor the Presentation of a Guardian or Fermor, and the Defendant answered to the first Presentation, and had Issue upon it, and not upon Both. And per Littleton he ought to answer to Both, but the Issue shall be upon the first only, and the Plaintiff shall not reply to him to the second Presentation. Br. Quare Impedit pl. 120 cites - E. 4. 20.

The Books are not directly that Presentment alleged in the Grantee is not good; But that where a Presentment is alleged in the Grantor and Grantee, there the Presentment in the Grantor is only traversable; For that is the Principal, and the alleging of the Presentment in Both is not double. Cro. E. 518. Mich. 38 & 39 Eliz. C. B. Fitton v. Hall.

16. If Tenant for Years presents during his Term, this is sufficient for him in Reversion. 22 E. 4. 9. b. Br. Quare Impedit, pl. 130. cites 22 E. 4. 8. Per Choke. Watf. Comp.

17. So if Lessee for Life presents. 22 E. 4. 9. b.

18. So if Tenant at Will presents. 22 E. 4. 9. b.

Inc. Svo. 445. cap. 22. cites S. C. — S. P. and with this agree divers Opinions in - E. 4. 20. 22 E. 4. 9. b. 16 H. 7. 13. a. 9 H. 7. 23. Brook tit. Quare Impedit 122. 13 Eliz. D. 300. And true it is, that it is generally understood in our Books, that where Tenant for Years or for Life, brings Quare Impedit he ought to allege Seisin in him who has the Fee, and this is regularly true; And yet Presentations by themselves suffice, as appears 8 H. 5. 10. and this Resolution does not impugn the said Rule; For Presentation of the Grantee of the next Avoidance being made in the Title and Right of the Grantor shall serve as well for him as his own Presentment and is Tantamount. 5 Rep. 98. the Countess of Northumberland's Case.

Watf. Comp. 19. So if a Guardian presents during the Wardship. 22 E. 4. 9. b.
Inc. Svo. tho' the King be the Guardian. And so 42 E. 3, 4. b. where a Manor
445 cap. 22. descends, and no Presentment has been before.

But per Brian clearly, the Plaintiff in Quare Impedit shall allege a Presentment in his Ancestor over and above the Presentment of the Guardian, and otherwise ill, and therefore shall not have Quare Impedit, but it is put to the Writ of Right. Br. Quare Impedit. pl. 139. cites 22 E. 4. 8.

Watf. Comp. 20. So if the King presents in Right of his Ward, though the Ward
Inc. Svo. has no Right, this usurpation for the Ward is sufficient Presentment for the King, if it becomes void during Monage, and for the Heir after. 42 E. 3, 4. Contra 21 E. 4. 9. b. as to the Heir.

The King brought Quare Impedit, and counted of a Presentation of J. S. who was seised in Fee &c. and of 2 others in himself by the Ward of the Heir of the said J. S. and that the Church is now void, and it belongs to him to present, and the Defendant disturbed him. Caund. said, the Clerk alleged by the King to be instituted &c. by the said J. S. was not received nor instituted by the Presentation of J. S. and it seems to be a good Plea; For the 2 Presentments of the King during Custody did not make Title to him nor to the Heir, without alleging Seisin by the Presentment in the Ancestor of the Heir, or in the Feoffor of the Ancestor of the Heir, Et adjournatur. Br. Quare Impedit. pl. 143. cites 43 E. 3, 4.

Br. Quare Impedit 21. A Presentment by the Bishop as Patron is sufficient * for the King to maintain a Quare Impedit to the Church, when the Temporalties come into the Hands of the King for Vacancy of the Bishoprick. 50 E. 3. 26.

* Fol. 378. pl. 42. cites S. C. — Watf. Comp. Inc. Svo. 446. cap. 22. cites S. C. — If the Bishop dies, and the Advowson happens void before his Death, the King shall present unto the same by reason of the Temporalties, and not the Bishop's Executors. F. N. B. 33 (R) cites 8 E. 2. Presentment, 10. 39 E. 3. 21.

Watf. Comp. 22. A Presentment by the Father is sufficient for the Wife of the
Inc. Svo. Son Tenant in Dower thereof. 14 H. 4. 12. admitted; and also for the
444 cap. 22. 2d Baron in Right of the Feme. 14 H. 4. 12.

23. If the eldest Son by the first Venter presents, and dieth without Heir, and afterwards the Church become void, the younger by the 2d Venter shall not present, nor have this Advowson; But Devon saith, If a Man hath two Daughters by divers Ventors, and they enter and make Partition to present by Turn, and one dieth without Heir, the other Sister shall be her Heir; Quod fuit concessum; But after the Partition, if one Sister hath presented, and afterwards died without Heir, it seemeth her Sister of the Half-blood shall not be Heir unto her. F. N. B. 36. (E)

See (Q. 2) (S. c) In what Cases there needs a Seisin.

Watf. Comp. 1. If the King be intitled to an Advowson by Office he shall have
Inc. Svo. Quare Impedit without Presentment, 21 E. 4. 16 H. 7. 3.
442. cap. 22. Contra 17 E. 3. 10. b. 11. 14. For there a Presentment is
cites S. C. alleged and traversed, and the Traverse allowed per Curiam, where
See (Q. c) the King makes Title by the seising by Office of the Possession of
pl. 3. Prior Alien, and the Presentment alleged in the Procurator of the Prior.

Watf. Comp. 2. But 17 E. 3. 14. b. It is said that if the Escheator seises an Advowson upon particular Command to seise it, the King may have
Inc. Svo. Quare Impedit without alleging any Presentment; For the Seizure
442. cap. 22. makes Title without more.
cites S. C.

Watf. Comp. 3. If a Man recovers in Writ of Right of Advowson, and has Execution, he may have Quare Impedit without alleging any Seisin;
Inc. Svo. For the Recovery sufficiently enough affirms his Right. 14 E. 2.
442. cap. 22. cites S. C. — Quare Impedit. 171. Adjudged.
S. P. 2 And
51. 51. in

pl. 37. in the Case of Sir Tho Cecil v. Hall. — A Man shall have Quare Impedit upon a Recovery by Default in Writ of Right of Advowson without alleging any Presentment; by all the Justices Br Quare Impedit pl. 138. cites 21 E. 4. 1. 3. — And where Collusion is found against an Abbot in Recovery of Advowson, the King shall have Quare Impedit without alleging Presentment; Per Choke J. Br. Quare Impedit. pl. 138. cites 21 E. 4. 1. 3. — See (Q. c) pl. 4. & (R. c) pl. 3.

4. 17 E. 3. 10. It is said that he may allege Seisin in Recovery Warf. Comp. by Presentment; But it is not traversable. Int. 8vo 443. cap. 22. cites same Cases and 25 E. 3. 15.

5. If the King seises an Advowson, which has been held always in proper Use, he shall have Quare Impedit without alleging any Presentment. 17 E. 3. 10. b.

6. If the King has Cause to present by the Temporalities of the Bishop, he shall not have Quare Impedit without alleging Seisin by Presentment. 17 E. 3. 40.

7. He who has no Right shall not have Quare Impedit without Presentment. 17 E. 3. 40.

8. If a Church be void at this Day, and the Patron presents, and is disturbed, he shall have Quare Impedit, tho' he had never Possession before. Br. Quare Impedit pl. 138. cites 21 E. 4. 1. 3. Per Catesby.

Solved, the Donor of the Advowson shall have Quare Impedit. Ibid.

9. If the King recovers by Quare Impedit, and afterwards ratifies the Estate of the Incumbent; yet at the next Avoidance the King shall present, because his Recovery and Judgment for him was not executed. N. B. 34. (F) cites T. 9. E. 3.

that accords herewith. 18 E. 3. 21. And see 9 E. 3. 22.

(T. c) What shall be sufficient Seisin.

See (Q. c) (R. c)

[1.] **T**HIS Writ is all in the Possession, and the Presentment is the Possession. 21 E. 4. 2.

(U. c) Quare Impedit. Seisin. By whom the Presentment being shall be sufficient. See (R. c)

1. **T**HE Presentment ought to be alleg'd in the Plaintiff, or in him whose Estate he has. 21 E. 4. 2. b.

2. A Presentment in him who grants the Advowson to B. a Purchaser, is sufficient in a Quare Impedit brought by B. Co. Magna Charta. 356. b.

3. A Presentment alleg'd in the Grantee of the next Avoidance is sufficient in this Writ. Co. 5. Countess of Northumberland. 97. b. Adjudg'd.

Possessions of the late Countess of Sarum, (attainted of Treason by Parliament Anno 31 H. 8) as of Fee, and by his Letters Patents he granted the next Avoidance, Nomination, Right of Patronage, and free Disposition of the said Church to A. and B. Conjunctim & Divisim, ita ut bene liceret eisdem ad Ecclesiam predictam cum primo & proxime vacare contingerit Presentare N. M. &c. At the next Avoidance they presented the said N. M. who was admitted and instituted, and afterwards the King granted the Advowson in Fee to the Duke of Somerset, and he granted it over, before his Attainder, to Sir John Thynn, and the Church became void; and whether Sir John Thynn might make to himself a good Title in a Quare Impedit by the Presentment aforesaid, or not, without alleging a Presentment in the King, or any other, by whom he claimed Quare bene. D. 105. b. pl. 18. Mich. 1 Ph. & M. Sir John Thynn v Earl of Pembroke. — The Reporter cites 9 H. 7. in Quare Impedit, and says, He thinks that, by the better Opinion, he may, but that it is a Question there, if the Grantee of the Advowson in Fee ought to shew the first Deed of Grant of the next Avoidance, or not? — Ibid. Marg. pl. 18. says, It is void, and that it was so adjudg'd, Trin. 31 H. 8. Rot. 100. in the Case of Sir Godfrey Fulgleam v. Sir William Hollis. — See (R. c) pl. 11, 15.

* Fol. 3⁹. * 4. A Presentment alleg'd in a Lessee for Life or Years is sufficient Title in this Writ. Co. 5. 97. b. Co. 6. *Bred.* 57. b. 9 D. 7. 23. Br. Quare Impedit, pl. 138. cites 22 E. 4. 8. Per Choke. — See (R. c) pl. 16, 17, 18.

Br. Quare Impedit, pl. 138. cites 22 E. 4. 8. Per Choke. — See (R. c) pl. 18.

6. So a Presentment alleg'd in a Tenant in Dower or Tenant by the Courtesy is sufficient Title in this Writ. Co. 5. 97. b.

7. So a Presentment alleg'd in Tenant by Statute Merchant, Staple, or Elegit, is sufficient Title in this Writ. Co. 5. 97. b.

Watf. Comp. Inc. 8vo. 446. cap. 22. cites S. C. 8. The Presentment of the Procurator of an Abbot in Right of the Abbey is sufficient Seisin for the Abbot. 17 E. 3. 14. Admitted 60, 76.

Watf. Comp. Inc. 8vo. 446. cap. 22. cites S. C. 9. So this Presentment by the Procurator shall be sufficient for the King, he having the Possessions for Cause of War, the Abbot being an Alien. 17 E. 3. 10, 14. Admitted 60. Adjudged 76.

Br. Quare Impedit, pl. 88, cites 14 E. 3. 37. — See (R. c) pl. 20.

For there is no other Entry into an Advowson, but to present, and he has no other Remedy; for he cannot have Writ of Right of Advowson, because he cannot allege Seisin in himself or his Ancestor. Br. Quare Impedit, pl. 70, cites S. C.

11. Upon an Alienation of an Advowson in Mortmain, if the Lord, of whom it is held, at the next Avoidance brings Quare Impedit, it is sufficient for him to allege a Presentment in his Tenant, who alien'd it in Mortmain. 21 E. 3. 27. b.

12. If a Lessee for Life or Years presents, and his Clerk instituted, it is sufficient Title for him in Quare Impedit at the next Avoidance without alleging any Presentment by the Lessor. Co. 5. *Specot* 57. b. Adjudg'd. Co. 5. *Count North.* 98. 11 D. 7. 29.

13. If the King be seised of a Manor in Fee, to which an Advowson is appendant, and the Church voids, and a Stranger usurps, and after the King grants the Manor and Advowson in Fee to J. S. as he may, because the said usurpation is not any usurpation to the King as to the Inheritance; and after the Church voids, J. S. shall have his Quare Impedit, being disturbed, and make his Title by the last Presentment of the King, without making mention of the Presentment of the Stranger. *Hobart's Reports* 189.

14. If two Jointenants be of an Advowson, and the one presents to the Church, and his Clerk is admitted and instituted, this in respect of the Privy shall not put the other out of Possession, but if that Jointenant who presents dies, it shall serve for a Title in a Quare Impedit brought by a Survivor. Co. Litt. 186. b.

(X. c) *At what Time the Presentment being shall be sufficient.*

Watf. Comp. Inc. 8vo. 443. cap. 22. cites S. C. 1. A Presentment before time of Memory is not sufficient, because it is not triable. 17 E. 3. 11. 14. b. 20 E. 4. 15. 42 E. 3. 4. b. admitted.

2. But

2. But in such Case he may allege the Presentment to be within Time of Memory, and then it is good; For the time is not traversable. 17 E. 3. 14. b. Warr Comp. Inc. Svo 445. cap. 22. cites S. C.

(Y. c) Quare Impedit. *At what Time it lies.*

[1.] **A** Quare Impedit lies against the Patron after 6 Months Plenarty of his Incumbent. 18 E. 3. 2. 13. b.

2. If a Man gives Land and Advowson appendant in Tail, and the Tenant in Tail suffers Usurpation which continues by 6 Months and dies, the Issue in Tail shall not have Quare Impedit, nor Aflise of Darrein Presentment till the next Avoidance. Br. Quare Impedit, pl. 141. cites 46 Aff. 4. per Finch. Br. Quare Impedit, pl. 148. cites S. C. — But if the Ancestor suffers a

Man to appropriate, and dies after the 6 Months past, and after the Heir suffers other 6 Months, he may present, and may have Quare Impedit or Darrein Presentment. Ibid. — Br. Quare Impedit, pl. 148. cites S. C. For upon Appropriation the Church remains void to him who has Title. — Where a Man makes Disturbance, and the Disturber appropriates the Advowson, there the Party may have Quare Impedit against the twentieth Abbot who is in after the Appropriation, and forty Years, for all those are only as one and the same Incumbent, and is no Plenarty which puts a Man from his Action, Br. Quare Impedit, pl. 10. cites 33 H. 6. 11.

3. The King may have Quare Impedit at any time during the Lives of the Patron and Incumbent, or of the Incumbent only, notwithstanding its being after the 6 Months; For Nullum Tempus occurrit Regi; Quod Nota. Br. Quare Impedit, pl. 39. cites 47 E. 3. 4.

4. Quare Impedit by the King, who counted, that T. held the Manor of D. of him in Capite with this Advowson appendant, and presented, and after the Church voided, and after he aliened in Mortmain, and the Bishop of R. presented, and his Clerk admitted, instituted and inducted, and the Bishop died, and the King within the Year brought Quare Impedit against the Incumbent alone, and well per Judicium; For he may plead against the King by the Statute, and also the Bishop, who now is, was no Disturber, so that the Action does not lie against him, and it lies well within the Year though the other has gained Possession by Presentation, and this because the King in this Case cannot have Writ of Right because he has no Right, but only a Title, by reason of Alienation in Mortmain, so that if he comes within the Year it suffices. Br. Quare Impedit, pl. 40. cites 47 E. 3. 11. Br. Droit de Recto, pl. 5. cites S. C. — So it was admitted there of a common Person if he comes within the Year after the Alienation in Mortmain, Usurpation within the Year shall not grieve

him And so it seems that the King by Usurpation not avoided by any Alien may be out of Possession as well as a common Person, and so is the best Opinion there; and therefore it seems that the one Usurpation within the Year cannot be an Interruption, and a Descent cannot toll the Entry of the Lord who enters for Mortmain; For he has no Right of Entry, but only a Title of Entry, which may be taken at any Time within the Year. Br. Quare Impedit, pl. 40. cites 47 E. 3. 11.

Quare Impedit of an Advowson in gross, the Plaintiff counted, that J. N was thereof seized and presented &c. and held the Advowson of him; and after aliened to the Dean and Chapter of H. by which he presented by the Statute of Mortmain, and it is yet within the Year, and the Defendant said, that the Church was full by 6 Months before the Writ purchased of his own Presentment; Judgment of the Writ; and because it is half a Year after the Alienation, therefore the Writ lies well, per Cur. Br. Quare Impedit, pl. 70. cites 21 E. 3. 27. — Br. Mortmain, pl. 13. cites S. C.

5. Quare Impedit by R. H. against 5. and three of them brought Quare Impedit against the Plaintiff of younger Date, by which R. H. prayed, that all may be determined upon his Writ of elder Date, and that the other may be discontinued or nonsuited, and then it was not much denied; but afterwards, fol. 56. it was agreed, that if they cannot agree to discontinue the last Writ that then each shall answer the other in both Writs; quod nota. Br. Quare Impedit, pl. 153. cites 11 H. 6. 23 & 56. Quare Impedit by J. A. and W. P. against B. B. and others, the Plaintiffs counted, and the Defendants answered, and so

to Demur; and after the same Defendants said, that they had another Quare Impedit against the Plaintiffs, and prayed that they may answer thereto; and per Brown, they shall proceed upon the Quare Impedit of the first Date, and this shall make an End of all; for otherwise there may be Inconvenience; for it may be

be, that the one may be found for the Plaintiffs, and the other with the Defendants, where it is all of one and the same Presentation to one and the same Church; and Newton accordingly, and no Inconvenience to any Party where they plead upon the Writ of elder Date. Br. Quare Impedit, pl. 79. cites 19 H. 6. 68.—For where *A. brings Quare Impedit against B. and his Incumbent*, and *B. e contra against A.* and they plead upon the first Writ, and the other set aside, there if the Title be found for *A.* he shall have Writ to the Bishop to institute his Clerk, and to oust the other if this Recovery be within the 6 Months, and no Mischief to the Clerk of the Defendant; because he was named in the Writ, and may have Answer, and if the Clerk of *A.* was in at the Time of the Recovery he needs no Writ to the Bishop, but shall recover Damages for the Disturbance, and if *B.* recovers against *A.* there the Clerk of *A.* shall be ousted if he was in by his own Suit, pending the Writ; but if he was in at the time of the Writ purchased, he shall be ousted; For it was the Folly of the Defendant that he had not pleaded that the Church was full of the Presentation of *A.* the Day of the Writ. Ibid.—But because the Plaintiff did not aver that the second Writ was of the same Presentation of which he brought his Writ, therefore each was awarded to answer to the other's Action. Ibid.

6. In a Quare Impedit for the King; though the Defendant has a Writ to the Bishop against the King, the King may have a new Quare Impedit against him of the said Avoidance, and make other Title. F. N. B. 35. (P)

Note, in such Case the Profits are to the Prior, and yet the Freehold is in the Abbot F. N. B. 36. (Q) in the new Notes there (a) cites 20 E. 3. Non-ability; 9. 14 H. 4. 10. adjudged.

7. If the Disturber present two or three times within the 6 Months, yet a Quare Impedit lies against the Disturber upon the first Presentment, if he purchase the Writ within the 6 Months. F. N. B. 35. (Q)

For the Institution and Induction thereupon are merely void, and so the Church was

8. The rightful Patron may have a Quare Impedit after the 6 Months against the Incumbent of an Usurper that is in by Simony, and in such Case Plenarty for 6 Months is no Plea. Per Cur. Noy. 25. in Case of Winchcomb v. Pulleton.

the Church was never full of the Person of such Clerk. Watf. Comp. Inc. 159. cites Hob. 167.

9. 1 Mar. 1 Parl. 2 Sess. cap. 5. enacts, that that the Statute of 32 H. 8. cap. 2. (of Limitations) shall not extend to a Writ of Right of Advowson, Quare Impedit, Affise of Darrein Presentment, Jure Patronatus &c.

(Y. c. 2) Quare Impedit. Where it shall be brought.

S. P. F. N. B. 32 (C) in the Notes there (c)

1. QUARE Impedit by the King against the Bishop of Sarum of the Prebendary of Horton, and counted of a Voidance by reason of the Temporalities of the Bishop being in the Hands of the King, and that the Prebend voiding, the King presented, and he disturbed, and counted that such a Bishop presented such a Prebendary who died, and so it is void &c. and it was brought in Wiltshire where the Cathedral Church was, and not in the County of S where the Body of the Prebend, viz. the Manor of Horton, was, which made the entire Prebend, and yet the Writ awarded good; Quod Nota. Br. Quare Impedit, pl. 68. cites 21 E. 3. 50.—But Fitzh. Brief 325. Anno 15 E. 3. is contra, but it is better here, as it seems; For Quare Impedit lies where the Church is.

* Quare Impedit was brought in the County of Hereford of

2. Quare Impedit does not lie in Guernsey, nor in * Wales, nor in other Royal Franchises, but it was admitted, that Quare Impedit lies in Durham. Br. Quare Impedit, pl. 152. cites 11 H. 6. 3.

an Advowson in Wales, and lay well. Br. Quare Impedit, pl. 16. cites 35 H. 6. 30.—S. P. that it shall be brought in the County adjoining; per Fortescue. Br. Quare Impedit, pl. 109. cites 36 H. 6. 33. And Brook says, the Reason is said elsewhere to be in as much as the Lords there have no Authority to write to the Bishop.—S. P. Co. Litt. 134. b. Neither shall Conuance be granted in a Quare Impedit, because the Inferior Court cannot write to the Bishop.

Quare Impedit of the Archdeaconry of St. D. in Wales was brought in the County of Hereford as in the County next adjoining to the Benefice; Quod Nota; and the King made Title by reason of the Possessions of the

the Bishop of St. D. being in his Hands, and so see that the Bishop was Patron of the Archdeaconry. Br. Quare Impedit, pl. 100. cites 24 E. 3. 42.

3. The King may sue this and every other Writ in what Court he please. F. N. B. 32. (E.)

(Z. c) Quare Impedit. How it shall be. In what Cases it shall be *Præsentare*.

1. **I**F the Sheriff will not put the Patentee of the King of a free Chapel in Possession, the Patentee shall have Quare Impedit quod permittat ipsum Præsentare. 14 H. 4. 11. h.

Watf Comp. Inc. Svo. 565. cap. 39. cites S. C. —

2. If a Man disturbs another to collate to a Benefice, yet the writ shall be good if it be Præsentare. 17 E. 3. 64. adjudged.

Fol. 580.

S. P. And in his Declaration he shall show the special Matter. Br. Quare Impedit, pl. 156. cites F. N. B. fol. 32 & 33.

3. In Quare Impedit the Plaintiff made Title, because *Fine was levied between J. N. and the Abbot of B. of the Advowson*, and the same Abbot granted by the same Fine, that J. N. and his Heirs at every Avoidance shall name to him his Clerk, and he shall present him over to the Bishop, and alleg'd *Seisin* accordingly, and that the Church is void, and he named a Clerk to the * Abbot, and he would not present him to the Bishop, and brought Quare Impedit, which was Quod permittat ipsum Nominare Clericum &c. where it should be Præsentare Clericum; and therefore the Writ was abated. Br. Quare Impedit, pl. 56. cites 4 H. 4. 10. 11.

Br. Quare Impedit, pl. 144. cites 14 H. 4. 11. S. C. — S. P. F. N. B. 33. (B) says that the Writ shall be Quod permittat ipsum præsentare

&c. and in his 4 Count he shall set forth the special Matter, and it shall be good. F. N. B. 33. (B) — See accordingly 1 H. 5. 1, 2. 4 E. 3. 69. 21 H. 6. 17. a. and he shall have a Writ to the Bishop to admit the Presentee whom he has named to another, whether the Writ be brought against him who had the Presentation or against a Stranger, yet see 24 E. 3. Quare Imp. 27. and 2 R. 3. Quare Imp. 152. that it lies not for him who has only the Nomination. F. N. B. 33. (F) in the new Notes there. (c)

4. F. N. B. 33 (B) in the new Notes there (d) says, See accordingly 22 E. 4. 22. a. 14 E. 4. 2. b. and 14 H. 4. 11. the Writ Quod permittat nominare was abated by Award in the like Case. — * Orig. is (Eveque) — † It should be 14.

4. If a Bishop be disturb'd to present where he ought to make Collation, the Writ shall be Quod permittat ipsum præsentare &c. and he shall count upon the Collation. F. N. B. 33. (D.)

F. N. B. 33. (D) in the new Notes there. (a) cites 16 E. 3.

Brief 660. Rast. Entr. 501. 17 E. 3. 64.

5. The King shall have a Quare Impedit of the Sub-Deaconry of York, which voided when the Temporalties of the Archbishoprick were in the King's Hands, and the Writ shall be Quod permittat eum præsentare; and yet the King shall give this Sub-Deaconry by his Letters Patents. F. N. B. 34. (G.)

(A. d) Quare Impedit. How it shall be. In what Cases the Writ shall be *Ad Ecclesiam*.

1. **I**F a Quare Impedit be brought of a Chapel, the Writ shall not be Quod permittat præsentare ad Ecclesiam, but ad Capellam. 8 H. 6. 37. Curia.

And because the Writ was Ad Ecclesiam, the Opinion of

the Court was, that the Writ should abate. Br. Quare Impedit, pl. 77. cites S. C. — If the King be disturbed to collate by his Letters Patent unto his Free Chapel, he shall have a Quare Impedit, and the Writ shall be Quod permittat præsentare &c. ad Presbendam in his Free Chapel &c. F. N. B. 33. (E)

(E)——F. N. B. 32. (E) in the new Notes there (b) cites 16 E. 3. Brief 660.——And 13 H. 4. Brief 870 where Ecclesia shall be intended a Parochial Church.

Br. Quare
Impedit, pl.
156 cites,
F. N. B. 32
& 33.

2. If the Clerk of a Donative be disturb'd, the Patron may have a *Quare Impedit Quod permittat ipsum præsentare ad Ecclesiam &c.* and declare the special Matter in his Declaration. Co. Litt. 34. 4 cites D. 1 Jac. B. R. Rot. 601. between Fairchild and Gayer, in Trespass. Resolved for the Rectory Parochial Donative of St. Burich in Cornwall.

Per Choke
Ch. J. in
Case of two
Patrons and
two Incum-
bents, as
here) if ei-
ther of the
Patrons be
disturb'd, he
may have
Writ either
Præsentare ad
Medietatem Ecclesiæ, or Præsentare ad Ecclesiam; for Quoad him it is a Church. 10
Rep. 136. b. in Smith's Case.

3 Where 2 or 3 Patrons are feis'd of an Advowson to present by Turns, the Qua. Imp. shall be *Præsentare ad Ecclesiam*; for it is but one Church. But where the Church is divided, and there are 2 several Patrons and 2 several Incumbents of the same Church, so that a distinct Part of the Church and Tithes belong to each, in such Case the Quare Impedit shall be *Præsentare ad Medietatem &c. Ecclesiæ*. So in Case of a Consolidation of 2 or 3 Churches into one, and the Patrons now present by Turns, so as one Incumbent possesses the whole, the Presentation shall be *Ad Ecclesiam*. 10 Rep. 136. Trin. 10 Jac. C. B. Smith's Case.

4. In Quare Impedit for the Vicarage of B. in Devon, it was objected upon a Demurrer, That there is a Variance between the Writ and the Count, the Writ being *Quod permittat eum præsentare ad Vicariam Ecclesiæ de B.* and the Conclusion of the Declaration is *Quod ad ipsum E. (the Plaintiff) ad Ecclesiam prædictam sic vacantem &c. pertinet præsentare &c.* So that the Writ is *Quod permittat &c. præsentare ad Vicariam*, and the Declaration is *Ad Ecclesiam pertinet præsentare*. But to this it was answered, and so resolved per Cur. That *Omnis Vicaria est Ecclesia*, and that it is so held expressly in several Books, and therefore no Variance in Substance but in Form only; besides, this was not shewn for Cause of Demurrer, for the Cause shewn was Want of Protect, and the Precedents are as in this Case; and so Judgment for the Plaintiff. Whereupon Defendants brought a Writ of Error, and a Bill in Chancery &c. Carth. 315. 316. Trin. 6 W. & M. Reynell v. Long.

5 The Act of 22 Car. 2. for Rebuilding London, enacted that the Parishes of St. Andrew Wardrobe and St. Anne Black-Fryers should be united, and that the first Presentation shall be by the Patron of the (Church) whose Endowment is of the greatest Value. Now the Truth was, that St. Anne Black-Fryers was a Vicarage. And upon a Quare Impedit brought it was among other Things ruled by the Court, That tho' Ecclesia and Vicaria are different Things, yet it appearing upon the whole Record that the Rectory of Black-Fryers is Appropriate, the Vicarage of Black-Fryers shall be a Church within the Intent of the Act. 3 Lev. 435. 436. Hill. 7 W. 3. in C. B. Reynoldson & al. v. Bishop of London and Blake.

6. There needs not the Name of the Saint, as *Ad Ecclesiam de Sancti M. de W.* except there be more Churches in the same Vill. F. N. B. 32. (E) in the new Notes there, cites 9 Eliz. Dyer 259. 13 H. 4. 872.

* And note,
Such Writ
was at the
Common
Law.

F. N. B. 32.
(H) in the
new Notes
there. (a)
cites 14 H.

7. If a Man be disturb'd to present unto a Parsonage, then the Writ shall be * *Præcipe &c. Quod permittat ipsum præsentare &c. ad Ecclesiam* &c. for the Word Ecclesia is always intended a Parsonage. And if it be a Vicarage, then the Writ is *Quod permittat ipsum præsentare ad Vicariam*. And if it be a Prebend, then *Ad Prebendam*, and if a Chapel *Ad Capellam*; and so he ought to name the Advowson as it is &c. F. N. B. 32. (H.) cites 8 H. 6. 22.

2. Quare Impedit 183. ad Canellam. 2 H. 3. Grants 89. ad Vicariam.——† In a Quare Impedit Præsentare ad Ecclesiam, it is a good Plea to the Writ that it is but a Chapel, for † Ecclesia shall be intended a Parish-Church. F. N. B. 32. (H) in the new Notes there (b) cites 5 E. 3. 60. 22 E. 3. 2 a. 12. a. 8 H. 6. 32. a. 37. a. 13 H. 4. Brief 870——‡ S. P. in F. N. B. 33 E. in the new Notes there (b) cites 16 E. 2. Brief 660. and 13 H. 4. Brief 870.

8. There is another Form of Writ Quod permittat ipsum præsentare *ad Ecclesiam Domus Sancti Martini Bristol. quæ vacat. &c.* and so of an Hospital and the like. F. N. B. 33. (G.) cites Lib. Entr. 506.

(B. d) Quare Impedit. *How it shall be brought.*

1. **A** WRIT may be brought Quod permittat ipsum præsentare *ad Cantariam, without laying Perpetuam Cantariam.* 17 E. 3. 12.
2. So he need not say *Ad perpetuam Vicariam.* 17 E. 3. 12.
3. A Quare Impedit lieth of a Priory, or of an Abbey, and the Writ shall be *Quod permittat ipsum præsentare ad Prioratum seu Abbatiam &c.* F. N. B. 33. (F.) cites the Book of Entries 59. and 18 E. 3. Quare Impedit 151. accordi gly.

(B. d. 2) Quare Impedit in general. *At Common Law or by Statute.*

1. **Q**UARE Impedit and Darrein Presentment *complains of Chattle only, viz. the present Avoidance.* Jenk. 13. pl. 23.
2. Quare Impedit *was by the Common Law,* but it was only *upon a Presentment, viz. Induction;* but if the Incumbent was to be inducted, then at the Common Law a Writ of *Right of Advowson* only lies. Per Popham: Brownl. 166. Trin. 4 Jac. the King v. Matthews.
3. In Quare Impedit *both Plaintiff and Defendant are Actors* one against another, and therefore the Defendant may have a *Writ to the Bishop* as well as the Plaintiff, which he can't have without a Title appearing to the Court. Vaugh. 58. Trin. 21 Car. 2. the King v. Jervis & al.
4. If the Church is *full of the Defendant by Institution,* then it is a Quare Impedit within the Statute; otherwise it is a Quare Impedit at Common Law. Skin. 25. Mich. 33 Car. 2. C. B. Holt v. Holland.

(B. d. 3) Quare Impedit. *In what Cases it lies.*

1. **I**F the Advowson be *in Gros,* the Tenant *in Tail* may have Quare Impedit. Br. Quare Impedit, pl. 31. cites 43 E. 3. 24.
2. Where I grant *one Part of an Advowson to S. and another to W. and the third to F. reserving the fourth Avoidance to my self,* in this Case Quare Impedit does not lie; for the Advowson is one entire Thing, and we cannot join in Action; and therefore, if we cannot agree in Presentment, the Bishop shall have it by Laple; but of Coparceners, if they cannot agree, the Eldest shall have the Presentment, Br. Quare Impedit, pl. 10. cites 33 H. 6. 11.
3. Note taken *there is no Patron, As where the Prior is Priest, and is admitted to his own Benefice; Or where my Advowson is alien'd in Mortmain, and appropriated to a Religious House, and the like;* in those Cases, I may have Quare Impedit, and the Plenary by 6 Months is no Plea. Br. Plenary, pl. 10. cites 14 H. 8.

4. *Collation by 6 Months* does not toll *Quare Impedit*, where the Plenarty is by such Collation, for the Statute of Westminster 2d. requires Presentation in this Case. Jenk. 281. pl. 7.

5. A Man can't have *Quare Impedit* and *Darrein Presentment* too, but on the Return of the *Quare Impedit*, the *Darrein Presentment* brought after shall abate. But Per Hobart, if he had brought *another Quare Impedit* it had been well; and so it was received in the Earl of Bedford's Case. And Per Hutton, W. 2, 5, proves that he shall not have both. Noy 18. Mich. 15 Jac. C. B. the Village of St. Andrew's v. the Archbishop of York and the Countess of Shrewsbury.

6. If A. a *Spiritual Man* has the *Presentation*, and B. a *Layman* the *Nomination*, if B. nominates to A. the *Spiritual Man*, C. a *Clerk* to be presented over, and A. doth so accordingly, if before C's Admission B. nominates another to be likewise presented, which A. refuseth to do, because A. hath presented one already by his *Nomination*; B. shall not maintain any *Quare Impedit* against the *Presentor* for such Refusal; because A. is *Patron*, and being a *Spiritual Man* he cannot change his *Presentation* already made. Dod. of Adv. 65, 66. Lect. 12.

* The Process in this Action are Summons, Attachment, and Distress peremptory, by the Statute of Marlbridge 13.

(B. d. 4) Quare Impedit. * Process and Proceedings.

1. 52 H. 3. cap. 12. ENACTS, That in Assises of Darrein Presentment, and in a Plea of Quare Impedit, of Churches vacant, † Days shall be given, from 15 to 15, or from 3 Weeks to 3 Weeks, as the Place shall happen to be near or far.

The Sheriff must summon the Defendant by good Summoners, and return their Names upon the Original; The Writs are returnable from 15 Days to 15 Days; The Summons on the first Writ may be made at the Church-Door, or to the Person of the Defendant; and altho' a Nihil be returned upon the first Summons, Attachment and Distress, yet if the Defendant make Default upon the Distress, a Writ shall go to the Bishop on the Title made by the Plaintiff. Brownl. 158. — See the Case of Williams v. Blower & c. contra.

This Act extendeth not to a Writ of Quare non admittit nor to an Incumbravit, but only to the Assise of Darrein Presentment and Quare Impedit, and the Reason thereof is for fear of the Lapse. 2 Inst. 124.

† By Assent of Parties a longer Day may be given than is prescribed by this Act, but that Assent must be entered of Record. And it is to be observed, That by the Common Law great Delays be disallow'd in four Kinds of Actions viz. In all Writs of Dower, Quare Impedit, Assise of Darrein Presentment, and Assise of Novel Disseisin, and therefore no Protection shall be allowed, or Essoin de servicio Regis shall be cast in any of them. 2 Inst. 124.

At the Common Law, in a Quare Impedit, the Process was And in a Plea of Quare Impedit, if the Disturber come not at the first Day that * he is summoned, nor cast no Essoin, then he shall be attached at another Day; at which Day, if he come not, nor cast no † Essoin, he shall be distrained by the great Distress above given.

Summons, Attachment, ‡ and Distress Infinite, which was mischievous in respect of the Lapse; Now it is provided, That if he appear not at the Grand Distress, Judgment shall be given for the Plaintiff, and a Writ to the Bishop awarded. 2 Inst. 124. — ‡ S. P. Br. Quare Impedit, pl. 152, cites 11 H. 6. 3. And the Plaintiff should not have Writ to the Bishop 'till the Defendant came, but contra now by the Statute. — S. P. Brownl. 158.

* Put the Case, That upon the Summons the Defendant is returned Nihil, and at the Attachment and Distress Nihil alio; this Case is out of the Letter of the Statute, for the Defendant was never summoned; but it is said, That when there be two Mischiefs at the Common Law, and the Lesser is provided for by express Words, the Greater shall be included within the same Remedy. This Case, when Nihil is returned, is the greater Mischiefe, for he by his Default shall lose nothing, but in the Case provided, the Defendant by his Default shall lose Issues; and the Law intends, that he will rather appear than lose Issues. 2 Inst. 124.

A Quare Impedit is brought against two; upon the Distress one doth appear, and the other makes Default; in 7 E. 3. it was resolv'd, that the Plaintiff should not presently have a Writ to the Bishop against him that makes Default, for that it might be, that the other that appears shall have against the Plaintiff a Writ to the Bishop; And it was there said, That it was not reasonable, that upon one Original the Plaintiff should have one Writ to the Bishop for him, and another against him; but this notwithstanding, the Plaintiff by this Act ought to have against him that makes Default, a Writ to the Bishop; and it was not against Reason, if the other Defendant can bar the Plaintiff, for him to have a Writ to the Bishop.

Bishop against the Plaintiff by the Common Law ; And so be the later Books, and common Experience, at this Day. 2 Inst. 124, 125.

† Eflonum or Exonum, is derived of the French Verb Eflonier or Exonier, which signifieth to excuse, so as an Eflon in legal Understanding is an Excuse of a Default, by Reason of some Impediment, or Disturbance, and is as well for the Plaintiff as the Defendant, and is all one with that which the Civilians call Excusatio. Of Eflons there have been (as we have read in our Books) 5 Kinds, viz. 1st De Servitio Regis. 2dly, In Terram sanctam. 3dly, Ultra Mare. 4thly, De Malo Lecti, in our old Books called Eflonum de Resantia. 5thly, Et de Malo venendi ; and this last is the common Eflone which is intended in this Act. 2 Inst 125.

In a Quare Impedit or Darrein Presentment, an Eflon de Service le Roy ad Terram Sanctam, or Ultra Mare, lieth not for doubt of the Law, but a common Eflon lieth ; and of Eflons the Mirror said well, Abusio est que faux Causes de Eflones sont Receivable de cy que Droit, ne allowe Fauxime in nul Case, & Abusio est d'allower Eflone in Personal Actions ; For the same Author treating De Articles per vels Roys ordain, saith, Ordein fuerunt Eflones in mixt Actions, and Reals & Ne in Personals. And I find not in Glanvill any Eflons but in Real and Mixt Actions ; but before the making of this Act, Eflons were allowed in Personal Actions. 2 Inst. 125.

*And if he come not, then * by his Default a Writ shall go to the Bishop of the same Place, that the Claim of the Disturber for that Time shall not be pre-judicial to the ‡ Plaintiff ; saving to the Disturber his Right at another Time when he will sue therefor.*

* Upon these Words of this Act, Plaintiff shall have a Writ to the Bishop

without making of any Title. 2 Inst. 125. — The Statute saith only, Scribatur Episcopo, and yet the Plaintiff shall have both a Writ to the Bishop, and besides a Writ to enquire of Damages. If the Bishop be out of the Realm, a Writ to the Bishop may be awarded to his Vicar-General, for he is in Place of the Bishop. 2 Inst. 125.

If the Defendant appear at the Grand Distress, and take a Day by Prece partium, and after makes Default, no Writ shall be awarded to the Bishop ; for this Case, in respect of his Appearance, is out of the Statute ; but a new Distress shall be awarded. 2 Inst. 125.

‡ The King shall take the Benefit of this Statute. 2 Inst. 125.

*The * same Law, as to the making of Attackments, shall from henceforth be observed in all Writs where Attackments lie, as in making Distresses, so that the second Attackment shall be made by better Pludges, and afterwards the last Distress.*

* This is the last Clause of this Chapter and is to be understood

according to the Letter, and needeth not any Exposition. 2 Inst. 125.

2. In Quare Impedit the Plaintiff recover'd against the Bishop, and had *Distingas Episcopum* directed to the Sheriff for disturbing the Church ; and the Sheriff returned 20s. in Issues, and the Plaintiff pray'd another Distress, and had it. Br. Quare Incumbavit, pl. 2, cites 21 E. 3. 31.

3. If the Defendant makes Default after Appearance, the Plaintiff shall recover immediately, and his Damages ; but if they have *Day by Continuance*, there the Plaintiff shall only have *Distingas* upon the Default. Br. Quare Impedit, pl. 151, cites 2 H. 4. and 6 R. 2.

4. Quare Impedit ; the Sheriff return'd *Nihil at the Summons, and Attachment at the Distress* ; And by 4 Justices, the Plaintiff shall recover by Equity of the Statute ; But 2 Justices Contra. Br. Quare Impedit, pl. 152, cites 11 H. 6. 3.

5. In Quare impedit the Sheriff may *summon the Defendant in the Church*. S. P. For in Per Martin. But Danby and Cotton Contra ; but that he may, in Writ of *Right of Advowson*. Br. Quare Impedit, pl. 152, cites 11 H. 6. 3.

For in this Writ the Advowson is not demanded, but the

Disturbance is to be punished for the Damage done to the Person By Danby and other Justices. F. N. B. 32. (E) in the new Notes there (b) cites S. C.

6. If some of the Plaintiff's appear in Quare Impedit, and some not, Summons ad Sequendum simul shall issue before the others shall proceed. Br. Quare Impedit, pl. 153, cites 11 H. 6. 23.

7. The Bishop of Coventry was Patron of two Prebends, and he granted the next Avoidance of either of them, as should happen to be first vacant to J. S. which Grant was confirmed by the Dean and Chapter ; The Bishop that made the Grant died ; One of the Prebendaries died ; The then Bishop collated it to M. and the Grantee brought a Quare Impedit, and the Court were of Opinion, That it must be brought in that County where the Cate-

Br. Licut. at E. 3. S. P.

and Church is, and not where the Body of the Prebend lies, according to 21 E. 3. D. 194. pl. 33. Mich. 2 & 3 Eliz. --- v. Ralph Bayne Bp. of Lincoln and Merrick.

8. If the Bishop and Defendant join in bringing a Writ of Error, the Bishop, unless *summoned and severed*, must join in the *Assigning* them. Cro. J. 92. Mich. 3 Jac. *Launcester v. Lowe*.

9. *After Judgment in Quare Impedit for the King v. Saker, and Writ to the Bishop, the Incumbent continued Possession, and wasted the Vicarage House*, so a Prohibition was pray'd and granted per Curiam; For as Coke said, 'Tis the Dowry of the Church, and any one may have this Writ against him; For it is the Writ of the King, and the *Prohibition* was *Not to do waste*. Roll. R. 335. Hill. 13 Jac. in the Case of Knowles v. Harvey.

10. *Judgment* was in Quare Impedit, and the same Term a Writ of Error was delivered to the same Court *before a Writ to the Bishop* was awarded to admit the Clerk. Per tot. Cur. The Writ of Error ought to have been allowed without any other Superfedeas, because a Writ of Error is a *Superfedeas* in it self. Godb. 439. Trin. 5 Car. B. R. *Earl of Pembroke v. Bostock*.

A Juror was deny'd to be withdrawn after Evidence given in Qua. Imp.

11. In a Quare Impedit, if the Ven. Fac. be returned, the Plaintiff cannot be *non-suited* without calling the *Jury*; But if the Ven. Fac. be not returned at the Day, then he may be non-suited on the Roll without calling the Jury; And so he may in the first Case if Deti. consent. Noy. 107. Anon. and Departure from the Bar, because the King shall not be prejudiced; For the Judgment is *Salvo Jure*, but otherwise it is used in the Exchequer upon an Information or Intrusion. Noy 111. the King v. the Bishop of Winchester and Dr. Hide.

2 Mod 264. S C accordingly, and the Court said, that the Sheriff ought to have gone to the Church, and seised the Profie, and if there be nothing, to return a Nihil: And that the Court being moved again, continued their former Opinion; It was objected that leaving due Notice upon the Summons was as much as was required; For the other Writs are only to give the Defendant Time to plead, and therefore not

necessary that Notice should be given upon every one of the Writs; For if once served it is enough. But the Court was of Opinion, that the Defendant having not appeared nor cast an Effoign, and Judgment Final being given, it was Reason that all the Process should be served really, of which there had been no Occasion, if he had either appeared or effoined, and therefore the Process not being duly served Judgment

12. In a Quare Impedit against two, they severally appeared, and cast an Effoign by Turns, and Idem Dies was given to him who first appeared &c. Then an Attachment issued against them for not appearing at the Day, and Process continued to the Grand Distress; which being returned, and no Appearance, Judgment Final was ordered to be entered, according to the Statute of Marlbridge, cap. 12. It was moved to discharge this Rule, because the Defendants were not summoned, either upon the Attachment or Great Distress, and the Sureties, returned upon the Process, were John Doe and Richard Roe; that if Judgment final should be entered, there is no Remedy but by Writ of Deceit, and on such a Writ the Summoners and Veyors are to be examined in Court, but Feigned Persons cannot be examined, so that it is an Abuse of Officers to return such Names; that Ignorance of the Sheriff was the original Cause of it, who being to make Returns, and finding the Names of John Doe and Richard Roe set down in the Books of Precedents as Forms, followed those Precedents exactly, and made their Returns accordingly, and took no further Care to return true Summoners, per Cur. the Design of the Statute of Marlbridge was to have Process duly executed, and that cannot be without the Tenants having notice of it; For if the Defendant do not appear upon the Summons, an Attachment issues against him, commanding the Sheriff to seise his Body, and to make him give Sureties for his Appearance, if he will not appear, then the Grand Distress is awarded, to seise the Thing in Question; and if still he neglect to appear, then Judgment Final is to be given, by which the Right is for ever concluded, and this being so fatal, the Process must never be suffered to be changed into a Thing of Course. It is true, the Defendant here had Notice of the Suit, but he had not such Notice as the Law allows him; And for his Fouching in Effoign the Law allows it him. Accordingly Judgment was set aside. Mod. 248. pl. 7. Trin. 29 Car. 2. C. B. *Searle v. Long*.

Judgment was set aside, and cited Raft. Ent. 217. And they held that the *Effusion* of the other Defendant was no wise binding to the Patron Defendant, because they may sever in Pleading, and so that Judgment was likewise set aside.

(B. d. 5) *Pleadings. Abatement of the Writ by Death of one of the Parties, and the Effects thereof.*

1. **P**RIOR Defendant in Quare Impedit died, and the Writ abated, *he not being named by his proper Name*, quod Nota; For now there is no Defendant, Br. Corporations, pl. 79. cites 10 E. 3. 16. & Fitzh. Quare Impedit 32.

S. P. And after the 6 Months passed the Plaintiff brought another

other Quare Impedit against his Successor, and awarded good. Br. Quare Impedit. pl. 158. cites 10 E. 3. & Fitzh. Quare Impedit. 32.

2. Baron and Feme brought Quare Impedit, and the Feme dy'd pending the Writ, and yet the Writ remained good, and the Baron had Writ to the Bishop as Tenant by the Curtesy. Br. Quare Impedit. pl. 67. cites 38 E. 3. 35.

S. P. Br. Quare Impedit pl. 57. cites 14 H. 4. 12. In Quare

Impedit by the Baron and Feme, if the Writ abates by the Death of the Feme, and the Baron brings another Writ, and Plenary is pleaded in Bar, he may aver, That the Church was void, within 6 Months before the first Writ purchased; For it is abated there by the Act of God, and not by the Folly of the Party. Per Newton. Br. Journe &c pl. 12. cites 7 H. 6. 16.

Baron and Feme made Title to present in Right of the Feme, and after Issue joined, and before the Verdict Facias the Feme died. The Baron shewed that himself had taken out a Venire Facias in his own Name; Whereupon the Defendant demurred, supposing that the Writ was abated; But Winch was of Opinion, that the Writ was not abated, because this was a Chattel vested in the Husband during the Wife's Life. Win. 73 Pasch. 22. C. B. Blunt & Ux. Hutchinson. — So where several Barons and their Femmes were Plaintiffs, and one of the Femmes died pending the Writ before Judgment, the Court awarded Writ to the Bishop in the Name of the Baron and the others, Mo. 456. pl. 625. Trin. 38. Eliz. the Countess of Northumberland's Case — But if Quare Impedit be brought against Baron and Feme and theirs, and the Feme was dead the Day of the Writ purchased, the Writ shall abate; Contra, if she had died pending the Writ. Br. Quare Impedit. pl. 153. cites 11 H. 6. 23.

3. If Quare Impedit be brought against the Patron and Incumbent, and the Patron dies pending the Writ, yet the Writ shall not abate, and so Recovery may be against the Incumbent alone. Br. Quare Impedit. pl. 47. cites 7 H. 4. 25. 37.

Quare Impedit against the Patron and Incumbent, the Patron pleaded

ed in Bar, and the Incumbent pleaded the same Matter also, and so to Issue, and after one came and pleaded that the Patron is dead after the last Continuance, Judgment of the Writ, and the Writ was awarded good, per Judicium, after long Argument, by Reason of the Mischief of the Lapse. Br. Quare Impedit pl. 6. cites 9 H. 6. 30. — So where 2 * Partners, or 2 Jointnants bring Quare Impedit, and the one dies, the Writ shall stand for the same Mischief, and so is 38 E. 3. 35. Br. Quare Impedit. pl. 6. cites 9 H. 6. 30. — S. P. Br. Quare Impedit. pl. 67. cites 38 E. 3. 35 — S. P. And so of Tenants in Common. Br. Quare Impedit. pl. 57. cites 14 H. 4. 12.

4. If one of the * Plaintiffs, or one of the Defendants in Quare Impedit dies, Quare if the Writ shall not abate. Br. Quare Impedit. pl. 7. cites 9 H. 6. 56. per Rolfe.

* The Death of one Plaintiff shall not abate the

Writ, but he shall be severed F. N. B. 35. (L)

If 2 bring Writ of Right of Advowson, or if it be brought against two, and the one dies, of the one Party or the other, the Writ shall abate, Contra in a Quare Impedit; For there, after Title made, the Defendant is become Actor, and he may recover Damages against the Plaintiff. Br. Quare Impedit pl. 6. cites 9 H. 6. 30. per Babbington.

In Quare Impedit against 3. the one died pending the Writ, and yet the Writ was awarded good against the other; quod nota. Br. Quare Impedit. pl. 63. cites 9 H. 5. 6.

Death of the one before Writ purchased, shall abate the Writ against all; but Death of the one pending the Writ shall not abate the Writ [but] against himself himself may. Note the Diversity. Br. B. 1. 3. cites 27 H. 8. 20.

Quare

Quare Impedit was brought against the Bishop, who collated M as Patron, and pending the Writ, the Bishop died, yet Judgment was given for the Plaintiff to recover the Presentation, and Damages to half a Year's Value, and an Annuity of M. and Writ to the now Bishop or Metropolitan as the Plaintiff please. D. 194. pl. 33. Mich. 2 & 3 Eliz. Ralph Bayne Bishop of Coventry &c. and Meyrick's Case. — Ibid. Marg. says that Quare Impedit was brought against Patron Parson and Ordinary, and the Patron died, and yet Judgment was given against all, cites Trin. 25 Eliz. B. R. Sir Richard Pyle's Case — Cro. E. 324 S. C. by Name of Pyle v. the Queen. — S. P. For there are 2 Mischiefs, 1. if the Writ abates the *Disturbance* shall not be punished, though the Writ was well commenced; For there wants a Disturber; And 2dly, if the Writ abates not, but the Plaintiff shall proceed to Judgment and Execution, the very Patron shall be put out of Possession, and as in the last Case, he may recoup the Plaintiff by Writ of Right, but is without Remedy, if the Writ abates, which is the greater Mischief, it shall not abate. 7 Rep. 26 b in Hall's Case, and cites 7 H. 4. 26 b. 13 H. 8. 13. 9 H. 6. 6. 5.

Quare Impedit by a Prior against the Bishop of C. and others, one pleaded that one of the Defendants was dead the Day of the Writ purchased, and demanded Judgment of the Writ, et non Allocatur for all. Br. Quare Impedit, pl. 49. cites 7 H. 4. 34. 36.

The Grantee of the next Presentation brought Quare Impedit, and 5. A. grants to B. the next Presentation to the Church of D. the Church voids, and B. brings Quare Impedit, and dies pending the Writ, and after the 6 Months pass, the Executor can have no Remedy. Br. Quare Impedit. pl. 158. cites 4 E. 6.

It did after the 6 Months pass, pending the Writ, and the Executors brought another Quare Impedit by Journeys Accounts, and took general Writ, and counted generally that the Grant was made to the Testator, and he brought Quare Impedit and died, and that they brought this Writ, Et ea Ratione pertinet ad ipsos presentare, and the Defendant hindered them, and then it purported, that this is of a Disturbance done to themselves after the 6 Months passed, and then the Writ does not lie; For all ought to be comprized in the Writ, and count specially, and shall demand Writ to the Bishop upon the Presentation, and Writ of the Testator, and because it did not, therefore ill, Et nihil inde venit. Br. Quare Impedit. pl. 160. between Mark, Ogle, and Harriſon. But Brooke says, It seems that where the Plaintiff dies, none can have other Writ by Journeys Accounts. — Br. N. C. 4. E. 6. pl. 410. S. C.

The Plaintiff in a Quare Impedit died pending the Writ; It was prayed to have another Writ for the Executors; For he said he could not have it but by the Allowance of the Court, and the Court granted it, but bid him look well to it, if it lay in this Case or not, and in what Form the Writ shall be. Cro. E. 174. Hill. 32 Eliz. Walter Moile's Case.

Quare Impedit is revivable by Journeys Accounts. Per Hale Ch. J. Vent. 230. Hill. 24 & 25 Car. 2. B. R. in the Case of Dacres and Duncombe.

6. Quare Impedit brought by the King abates by his Demise. Het. 83. Pasch. 4 Car. B. R. the King v. Clough.

(B. d. 6) Abatement of the Writ for other Matters. In what Cases, and the Effect thereof.

1. **N**OTE; A Writ brought by the King or Queen is not, Unde queritur, that the Defendant unjuste &c. 18 E. 3. 1, 2. (as it is in the Case of a Common Person) Also if the Words *Ut dicitur* be omitted, the Writ is good; Yet see 38 E. 3. 31. That in the King's Case it shall be *Ut dicitur*, but in that of a Common Person, in all Writs it shall be *Ut dicitur*, and if it be *Ut dicitur*, the Writ shall abate. F. N. B. 32. (E) in the New Notes there (c) cites the above Cases, and 17 E. 3. 50. 74.

2. Quare Impedit by the King against L. and intitled himself to the Moiety of the Advowson, because L. the Defendant was Outlaw'd in Treſons, and conveyed in Forma Juris (as appears in the Book) and upon the Avoidance he presented, and L. said that the Advowson was severed into three Portions, and named the Portions, Absque hoc, that the Incumbent, who died, was presented by the Father of L. as the King supposed in his Count; and the King demurred, and had Writ to the Bishop, because the Plea of the Defendant, viz. That the Church was severed into three Portions goes in Abatement of the Writ, and the Traverse goes in Bar; But if he had rested upon the Plea, that the Advowson was sever'd into three Parts, the King's Writ had abated. Br. Quare Impedit. pl. 115. cites 22 Aff. 33.

3. A Writ was brought by the Queen *ratione minoris etate* J. filii & heres S. in Custodia Regine existens, de qua prad. S. Terram suam tenent in

Copite,

Capite, where by the Count it appeared, that he held of one G. who was the Queen's Ward, and yet held good. F. N. B. 32. (F) in the new Notes there (b) cites 24 E. 3. 54.

4. In Quare Impedit it was agreed, that it is a good Plea to the Writ by the Patron or Incumbent, to say that the Writ bears Date in the Life of the last Incumbent. Br. Brief, pl. 75. cites 46 E. 3. 19.

So if it be brought by the Heir to say, that it bears Date in

the Life of the Ancestor in this Action. Br. *ibid.*—Br. Quare Impedit, pl. 37. cites S. C.

5. In Quare Impedit by a Prior against the Bishop of C. and others, one pleaded that the Church was full the Day of the Writ purchased of the Presentment of the Plaintiff; Judgment of the Writ, and because he claim'd nothing in the Patronage, the Plaintiff demurr'd; and therefore awarded that he shall not have the Plea; quod nota. Br. Quare Impedit, pl. 49. cites 7 H. 4. 34. 36.

6. In Quare Impedit the Defendant said that the Clerk of the Plaintiff was Instituted and Inducted before the Writ purchas'd and is now in, Judgment of the Writ; and the best Opinion was, that it is a good Plea; for he cannot recover the Presentation where himself has the Presentation, and it does not lie for Damages only. Br. Quare Impedit, pl. 54. cites 12 H. 4. 11.

And Per S. C. it is a good Plea for the Defendant that the Church was full of his own Pre-

sentment 6 Months before the Writ purchas'd. *Ibid.*

7. In Quare Impedit by C. against B. the Plaintiff counted that N. was seised of a Manor and Advowson appendant who presented &c. and N. gave in Tail, and the Donee at the Avoidance presented, and his Clerk in &c. and after the Tenant in Tail died without Issue, and he in Remainder entered and presented T. &c. and his Clerk in, and after died, and he presented again, and the Defendant disturb'd him; and the Defendant said that a Stranger was seised of the Manor and Advowson appendant, and presented F. &c. and died, and the Manor with the Appurtenances descended to K. as Daughter and Heir, who took the Defendant to Baron, and the Baron and Feme in Jure Uxoris presented, and the Feme is yet alive; Judgment of the Writ: And the best Opinion was, That it is no Plea to the Writ; for the Plaintiff alleges the Avoidance by the Death of T. and the Defendant by the Death of F. and also the Defendant does not allege that the Presentation made by the Father of his Feme was after the Presentation of which the Plaintiff declares, nor does he traverse it. Br. Quare Impedit, pl. 108. cites 14 H. 6. 23.

8. Jointenancy of the Part of the Defendant is no Plea in Quare Impedit: Contrary, it seems, of the Part of the Plaintiff. Br. Quare Impedit, pl. 108. cites 14 H. 6. 23.

In Quare Impedit against jointenancy one cannot plead to

the Writ by Joint Coparcenary [or] Tenancy in Common Pro indicito in the Plaintiff of the Advowson, unless he avers him to have other Title in the Advowson, or to be Incumbent. So if the Count be vicious; Quare of the Misnomer of the Plaintiff. Br. Quare Impedit, pl. 154. cites 31 H. 6. 15.

9. In Quare Impedit, if the Writ abates upon Plea to the Writ found against the Plaintiff, or by Confession of the Exception to the Writ, this is peremptory to the Plaintiff, and he shall not have another Quare Impedit. Br. Peremptory, pl. 12. cites 7 H. 6. 15.

Br. Quare Impedit, pl. 75. S. C. and cites S. C. Where the Writ

was against Patron and Incumbent, and the Patron made Default, and the Incumbent appeared, and pleaded that the Plaintiff was made a Knight after the last Continuance, and was found for the Incumbent, by which the Writ abated, and the Plaintiff prayed a Writ to the Bishop for Default of the Patron, but could not have it, because it is repugnant to have a Writ to the Bishop when his Writ abates—

Where the Plaintiff in a Quare Impedit was made a Knight pending the Writ, Shelly thought that inasmuch as this shall be accounted his own Default, he shall not have a Writ by Journeys Accounts. And agreed that the Books are clear that the Writ shall abate. * D. 55 a b. pl. 7. Patch 34 & 35 H. 8. 2000.—But it seems by the other Part of the Case (tho' not clearly express'd) that if this being made a Knight was not the Act of the Plaintiff himself, but that he had been compelled by the King to be made a Knight (as a Man having Lands of a certain Value, was compellable to be at that Time, and till the 12 Car. 2. it then he might have had this Writ. See *Ibid.*—And after this Case it was enacted by 1

E. 6. cap. 7. that making a Plaintiff &c. Knight &c. should not abate the Suit] — * S. C. Cited 6 Rep. 10. b. in Spencer's Case. — The Plaintiff's being made a Knight pending the Writ is peremptory; for common Experience tells us, that it is the Act of the Plaintiff, and no one is compell'd or constrained thereto. 7 Rep. 27. b. in Sir Hugh Portman's Case.

10. In Quare Impedit the Plaintiff in his Count made Title as to the Advowson appendant. The Defendant shew'd Fine levied of the Moiety, so that the Moiety is in gross, Judgment of the Writ; and it was doubted if it goes to the Writ or to the Action. Br. Quare Impedit, pl. 10. cites 33 H. 6. 11.

In Quare Impedit the Plaintiff counted of a Gift in Tail to his Ancestor of a Manor and Advowson as in Gross, and counted of two Presentments & non excipitur; and that the Church voided by the Death of R. and he presented; and the other said that the Advowson was appendant to the Manor, which Manor and Advowson were given to the Ancestor of the Plaintiff in Fee, and that the Brother of the Plaintiff gave one Acre Parcel of the Manor, and the Advowson to the Brother of the Defendant whose Heir he is, and that R. the Presentee died 6 Years since, and that the Church voided by the Death of W. Presentee of the Brother of the Defendant, Judgment of the Writ, which supposes an Avoidance by the Death of R. and also that this Writ is not purchas'd within 6 Months; and it was challeng'd for the Doubtless, & non Allocatur; for the Plea is to the Writ, and the Appendancy and the Descent to the Defendant is for Title. And it was agreed there, that if the Advowson was in Gross, then the Presentments are but Usurpations, and shall not prejudice the Heir in Tail by Reason of the Statute; but if it was appendant, then the Alienation of the Acre and Advowson is a Discontinuance, and he cannot present till he has recovered the Acre by Formedon; but if it was in gross he may have Quare Impedit; note the Difference; for Tenant in Tail cannot have Writ of Right. And after the Parties were compell'd to take Issue, if the Advowson was in gross or appendant at the Time of the Gift in Tail; quod nota. Br. Quare Impedit, pl. 31. cites 43 E. 3. 24. — And in Anno 44 E. 3. 15. in the Case the Issue was taken if the Acre, given with the Advowson in Discontinuance, was Parcel of the Manor or not, and so the Appendancy and the Gross was the Effect of the Matter, to maintain or destroy the Action, Br. Quare Impedit, pl. 31. cites S. C.

11. In Quare Impedit the Plaintiff counted that one J. F. was seised in Fee of the Manor of B. ad quod Advocatio prædicta pertinet, and presented one R. and after gave the Manor to which &c. to one O. his Ancestor in Tail, and alleg'd another Presentment in the Tenant in Tail, and convey'd the Manor to himself as Heir in Tail, and alleg'd several Descents; Littleton demanded Judgment of the Writ; for it is Ad quod Advocatio pertinet, where it should be pertinuit, & non allocatur; and the Descents adjudg'd not double, by Reason that the Gift is the Effect, and the Descents are only Conveyances. Br. Quare Impedit, pl. 11. cites 33 H. 6. 32.

12. It was agreed for Law, that if Quare Impedit abates, the Plaintiff shall not have another Writ; for this is peremptory, quod nota; and quære of it be for false Latin, which is the Default of the Clerk. Br. Quare Impedit, pl. 15. cites 34 H. 6. 37.

If the Writ abates for False Latin or Insufficiency of Form, this is the Default of the Clerk, and shall not be peremptory to the Plaintiff, nor shall the Defendant have Writ to the Bishop upon it, but the Plaintiff may have a new Writ of Quare Impedit; and with this agrees 3 H. 6. 3. a. 31 H. 6. 15. a. 7 Rep. 27. b. Pasch. 40 Eliz. in Sir Hugh Portman's Case.

13. In Quare Impedit if the Plaintiff is Nonsuited after Appearance, this is peremptory, tho' it be before Declaration; quod nota. Br. Peremptory 74. cites 19 E. 4. 9.

S. P. Resolv'd; and so tho' the Writ be brought

within six Months. 7 Rep. 27. b. Pasch. 40 Eliz. Sir Hugh Portman's Case. — So of a Discontinuance. Ibid. — The Nature of a Quare Impedit is to be final upon Nonsuit or Discontinuance. Hob. 137. 158 pl. 187. Trin. 14 Jac. in Case of the Earl of Bedford v. Bishop of Exeter and Wilson. — The Nonsuit of one Plaintiff shall not abate the Writ, but he shall be severed. F. N. B. 35. (L.)

This Case seems not clearly abridg'd; The Case itself is,

14. Quare Impedit by the Queen against others, and one is by her condemned, and Execution taken against him; this shall abate all the Writ against the others, as in Trespass against several. Br. Executions, pl. 146. cites 20 E. 4. 1.

That the recover'd by Default against one, and had Judgment to have Writ to the Bishop &c. with a Cesset Executio till tried between the others and her; for otherwise this Execution against one alone, will abate the Writ against the others; as in Trespass against two, if the Issue be tried against one, and the Plaintiff prays Execution against him, the Writ shall abate against the others &c. Pasch. 20 E. 4. a. pl. 3

15. In Quare Impedit against several, it was agreed that to say that *No such in Rerum Natura*, as the one of them is, shall abate all the Writ, but * *Misnomer of the one* shall not abate but only against him who is misnamed. Br. Brief, pl. 3. cites 27 H. 8. 26.

The King licenced N. to found a Provost of a Chauntry, which shall

be called *Provost of the Chauntry of C* and after the King impleaded him by Name of the *Provost of the House of C*. and for this Misnomer the Quare Impedit abated, notwithstanding it was aver'd for the King that he was known by this Name. Br. Misnomer, pl. 24. cites 38 E. 3. 14. — S. P. Br. Brief, pl. 137. cites S. C. The Reason seems to be, because the King shall take Conuifance of the Name, which he himself appointed by his Writ.

16. The *Teste* of every Quare Impedit shall be the same Day that the Writ is obtained, by Reason of the Lapse, that it do not prevent the six Months, so as to defraud the Ordinary. Br. Quare Impedit, pl. 151. cites the Register.

17. In Quare Impedit by the Queen the Count was upon a Presentation made by H. 8. in Right of his Duchy of Lancaster, and so convey'd the same to her by Descent. Exception was taken to the Writ, because it does not set forth how the Queen claims the Advowson; as where the King presents by the Temporalities in his Hands, the Writ shall say, *Ratione Episcopatus Cant. nunc vacant. or in Case of Ward, Ratione Custodiæ*; and that therefore in this Case it ought to be said *Ratione Ducatus*. But Anderson Ch. J. held the Writ well enough, and it is good enough both Ways, either Generally or Specially; and cited the Book of Entries accordingly, where the Writ is general, but the Count is *Ratione Ducatus sui Lancastriæ*. And afterwards a Precedent was shewn of Anno 32 H. 6. where the Writ was General, and the Count was *Ratione Ducatus*. Le. 226. 227. pl. 307. Pasch. 33 Eliz. C. B. The Queen v. Bishop of York.

18. If a Man has an Advowson in right of his Wife, and the Husband brings Quare Impedit, the Writ shall be general *Ad suam spectat Donationem*, without mentioning his Wife; per Anderson Ch. J. and cited the Book of Entries 483, that the Writ is general and the Count special. Le. 227. pl. 307. in Case of the Queen v. Bishop of York.

19. The Plaintiff in a Quare Impedit declared thus, (viz.) *Suam spectat Donationem*, leaving out the Word (*ad*;) adjudged, that the Writ shall be amended. 3 Nels. a. 36. pl. 5. cites Reynoldson v. Bishop of London. 3 Lev. 435.

I do not observe any such Point in the Case cited, but Goldsb. 38.

pl. 12. Hill. 30 Eliz. in Brokesby's Case is the same Point, and that at length by the Opinion of all the Justices it was amendable, and that a Clerk of the Chancery came into C. B. and amended it. — Cro. E. 119. pl. 4. Mich. 30 & 31 Eliz. S. C. by Name of Rookesby's Case.

20. If after 6 Months a Quare Impedit *abate*, which was brought within the 6 Months, the Plaintiff is remediless to recover his Presentation. Cro. E. 119. Mich. 30 & 31 Eliz. B. R. Rookesby's Case.

S. P. and yet the Writ shall not abate, but he shall recover

all in Damages, and therefore to prevent this it is usual to name the Ordinary in the Quare Impedit; Per Pigot. Br. Quare Impedit, pl. 147. cites 9 E. 4. 30. — But if the Quare Impedit *abates within the 6 Months*, the Plaintiff may bring another Writ; but if the Plaintiff be * *Non suit* within the 6 Months, he cannot have a new Writ; because the Defendant on Title made has a Writ to the Bishop, and for that Cause a new Writ to the Bishop will not lie. Brownl. 161. Anon. — *S. P. 7. Rep. 27. b. Portman's Case.

21. The Patron granted the next Presentation to A. and B. The Church became void, and during the Avoidance A. released his Right to B. who being disturbed, brought a Quare Impedit alone; The Defendant demurred, because it appears of the Plaintiff's own shewing, that they ought to have joined in the Action, and the Release, being made after the Church was void, was of no Effect; Adjudged accordingly that the Release was void. Le. 167. pl. 232. Mich. 30 & 31 Eliz. C. B. Brokesby v. Wickham and Bishop of Lincoln.

Ow. 85. S. C. adjudged. — 3 Le. 256, pl. 342. Hill. 32 Eliz. S. C. the Court held the Release void; because here was not any

Interest to be released, but a Power only to present, and an Authority annexed to the Person. — After the Voidance it is merely a Chosen Action, and so not to be released. Cro. E. 173. Brookesby's Case. — And. 223. pl. 241. S. C. adjudged — Goldsb. 112 pl. 19. S. C. Adornatur.

22. A Quare Impedit was brought by several Persons jointly, and in the Declaration they vary in their Title; The Court agreed, that the Writ shall abate; For the Judgment must agree with the Writ, unless there be *Summons and Severance*; and upon divers Titles a joint Judgment cannot be given; for there can be but one Rightful Title. Mo. 184. pl. 327. Anon.

23. In a Quare Impedit; where the Writ abates, the Defendant shall not have a Return; for perhaps his Clerk is in; if not, he may recover by a Quare Impedit as Plaintiff; and there can be no Judgment where there is no Writ. Where the Writ abates there is no Writ. Jenk. 124. in pl. 51.

Brownl.

163. S. C.

—S. C. cited Hutt. 4 in Case of Andrews v.

Hacker.—

S. C. cited

Brownl. 28.

in Case of

Sir William

St Andrew

v. the Arch-

bishop of

York and

the Countess

of Shrews-

bury.—*Se-

veral Quare

Impedit may

be brought

against seve-

ral Defen-

dants, as one

against the

Bishop, and

another a-

gainst the

Patron and Incumbent;

But if A. brings a Quare Impedit against B — B. cannot have a Quare Impedit against A. Brownl. 16. Anon.

This Case of

Coppledick

is in Win.

31. where

this Plea be-

ing pleaded

by the In-

cumbent was

demurred to, and another Plea being pleaded by the Patron, viz. that there was no such Church as Ulceby in the County of Lincoln, this last being tried it was found for the Defendant; For that there was an Union of the Church of Fordington to the Church of Ulceby, and that it was called Ulceby cum Fordington, and that Institutions &c. were to Ulceby, and that Ulceby was the greater, and Fordington the lesser Church and united, and therein had lost its Name, it was agreed, that being known by the one Name or the other had been sufficient to have found for the Plaintiff. It was objected for the Plaintiff in Arrest of Judgment, that there was a Mis-trial; For to try the Issue of Nul tiel Villi, the Venire should be from the Body of the County, whereas here it was De Vicineto de Ulceby; But all the Court agreed the Trial good, and that it is admitted there is such a Town, and the Writ implies it; and Judgment for the Defendant.—[But as to the Plea of the Incumbent, viz. that there is no such Richard &c. no farther Notice is taken of it.]—S. C. by Name of Coppledick v. Ter-

whit. Hob. 249, 250. Trin. 16 Jac. says, That the whole Writ was abated against all the Defendants upon the Verdict found for the Defendant, and that no Opinion was given upon the other Demurrer of No such Bishop &c.—* The Case of Blunt v. Hutchinson, Win. 73. is neither the S. C. nor the S. P.

S. P.

25. Quare Impedit against Richard Bishop of Lincoln, the Patron and Incumbent, who pleaded, that at the Day when the Writ was brought, there was no such Richard Bishop of Lincoln, and this was held a good Plea in Abatement. 3 Nels. a. 38. pl. 19. cites Hutt. 32. Coppldike v. Tansey; and Winch 73. S. C. reported by the Name of * Blunt v. Hutch-

inson.

26. In Quare Impedit the Defendant prayed Oyer of the Writ, and pleaded in Abatement that there was a Variance between the Writ and Count, the Writ being *Quæ ad nostram spectat Donationem*, and the Count was, *Quæ ad suam Donationem spectat Jure Prærogative*. It was objected on Demurrer, That the Title by the Writ is a Title in Fee, but this in the Count is only a Title Pro hac Vice; ted non all near it.

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For the Precedents are so, and the Writ is always general; and if the King has Judgment by Default, and a Writ to the Bishop, this will not gain a General Title to the Crown, or become an Usurpation; per Holt Ch. J. For where the King has Judgment by Default in a Quare Impedit, he, as well as a Subject, must by Suggestion on the Roll set forth his special Title. A Respondeas Oulter was awarded. 2 Salk. 559. Trin. 5 W. & M. the King v. Dr. Lancaster and Bishop of London.

27. In Qua. Imp. the Court varied from the Writ; for the Writ was Quod permittat presentare ad Vicariam, and the Declaration is *Ad Ecclesiam pertinet presentare*; but upon Exception taken to it the Court resolved, That *Omnes Vicaria est Ecclesia*, and that it is so held expressly in several Books, and therefore is no Variance in Substance but in Form only; and this not being shewn for Cause of Demurrer; Judgment was given for the Plaintiff, and thereupon the Defendants brought a Writ of Error and a Bill in Chancery &c. Carth. 315 &c. Trin. 6 W. & M. B. R. Reynell v. Long.

(B. d. 7) In what Cases the Patron &c. must be named.

1. THE King may have Quare Impedit against the Incumbent alone; contra Br. Quare Impedit, pl. 110. cites 41 E. 3. 10. 6. cites 9 H.

6. 30. by Babington.—And so where the Pope presented. Ibid.—S. P. Br. Quare Impedit, pl. 47. cites 7 H. 4. 25. 37.—Quare Impedit by the King against the Incumbent alone, who pleaded, which was found against the King, and it was moved in Arrest because the Patron was not named in the Writ, but because the Writ was admitted it was awarded that the Defendant Ear inde sine die. Br. Quare Impedit, pl. 47. cites 3 H. 4. 25.

Quare Impedit by the King against the Incumbent alone, and contended that the Abbot of H. was seized &c. in Right of the Church, and presented H. who was admitted, and after the Church seized, and presented B. who was admitted, and after was created Bishop of S. which the Church seized, and remained, and till the Temporalties came into the Hands of King E. 3. (which is intended the Temporalties of the Abbots as it seems to me,) and made the Defendant to the King who now is, by which he presented, and the Defendant disturbed him, (and so see that the * King shall have Presentation which fell in the time of the former King, and not his Executors;) and the Defendant pleaded to the Writ because he is only an Incumbent, and the Patron is not named, and the Writ awarded good; for it may be, that the Patron did not disturb, and also in this Case the King shall not recover the Advowson, but only the Presentation, and by this Recovery the Patron shall not be out of Possession as in other Cases, because it appears that the Title of the King is not to any Inheritance. Br. Quare Impedit, pl. 47. cites 7 H. 4. 25. 37. — — * Br. Presentation, pl. 11 cites S. C.

The King brought a Quare Impe it against the Bishop, Smith Incumbent, and Langford; The Incumbent pleaded that no Patron was named in the Writ; and per Cur. that is a good Plea in Bar, tho' the King be Plaintiff he claiming to present by Lapse for Simony. Also the Patron now was only Grantor of the Prochein Avoidance, and had presented Smith, yet he ought to be named; but if the Clerk had been in by Collation by the Ordinary for Lapse, or Provision of the Pope in former Times, or Ex Presentatione Regis against whom no Writ lies, if a common Person had been Plaintiff in the Quare Impedit, in those Cases it might be without any Patron. Noy. 151. the King v. Bishop of Litchfield &c.—Cites 7 H. 4. 37; and 7 Rep 26. 9 H. 6. &c.

2. Quare Impedit against one who said that the Bishop presented him by Lapse, and that he claimed nothing in the Patronage, Judgment if Tort; and the other prayed Writ to the Bishop, because he has disclaimed in the Patronage; But per Cur. you shall not have it, but your Writ shall abate, because he is no Disturber, nor the Bishop not named in the Writ; & adjournatur. Br. Quare Impedit, pl. 24. cites 42 E. 3. 7.

3. Quare Impedit by the King, who made his Title for Alienation in S. C. cited Mortmain of the Manor to which the Advowson &c. and the Bishop of 7 Rep 26. b. R. presented his Clerk who was admitted, instituted and inducted, and in Case of H. 11. 2. the Bishop died, and the King within the Year brought Quare Impedit against the Incumbent alone, and well; for he may plead against the King both by the Statute, and also the Bishop who now is was no Disturber, so that well.

the Action does not lie against him. Sav. 109. pl. 184. in Case of Hall v. the Bishop of Bath and Wells, cites 47 E. 3. 11.

4. Quare Impedit against R. L. as Incumbent, and D. C. as Patron; The Incumbent said, that he was presented to the same Church by A. B. and instituted and inducted, which A. B. is not named in the Writ; Judgment of the Writ; Per Brian, the Writ is good; For he has named a Disturber, and the Incumbent is not disturbed by A. B. but by D. C. and there is no Reason to have Action against him who has done no Tort to the Plaintiff. And therefore held good; and so see that the Writ is good against Disturber and Incumbent, though the Disturber is not very Patron. Sav. 109. pl. 184. in Case of Hall v. the Bishop of Bath and Wells, cites 22 E. 4. 44.

But where a Patronage is gained by the Presentation, Admission,

and Institution of a Clerk, such Patron ought to be named with the Incumbent in the Quare Impedit. Jenk. 200. pl. 18. cites it as resolved.

5. Where there is no Patron, there lies Quare Impedit without naming the Patron. Br. Presentation, pl. 23. cites 14 H. 8. 2. per Fitz-James J.

6. Where the King presents to my Church when I have Right to present, my Quare Impedit lies only against the Incumbent of the King, without other Patron; but in every other Case of Common Person, it must be brought against the Patron and Incumbent. Note, This was said per Frowicke Ch. J. for clear Law. But Marrow said, He had seen Quare Impedit against the Incumbent alone between Common Persons. But Frowicke reply'd, That he never had in his Life. Kelw. 53. pl. 9.

7 Rep. 25. b.

Hall v. Bp. of Bath and Maunton.

The Case was, The

Dean of W.

was seised of a Vicarage

of W. ap-

pendant to the Manor of

W. in Fee in Right of his

Deanry, and presented P.

who was inducted, and

leased the Manor to the Earl of L. for Years, who assign'd It to Sir G. S. and he granted it to C. R.

The Vicarage voided, R. presented D. who was admitted &c. C. R. assign'd to H. the Plaintiff. D. was deprived. H. brought Quare Impedit against the Bishop and the Incumbent for disturbing him to present. The Incumbent pleaded, that he claimed nothing in the Advowson of the Vicarage, but is Vicar of the Church of the Presentation of the said G. S. who is alive, not nam'd in the Writ, and demanded Judgment of the Writ; And upon Demurrer it was resolv'd, That the Writ should abate, and that the Patron ought to be named in the Writ; 1st, Because the Patronage will in this Case be recover'd against him that has nothing in the Patronage; and there is no Reason, that he who is Patron shall be ousted thereof, when he is a Stranger, and not Party to the Writ; and especially when, as in this Case, he might be made Party thereto. 2dly, At Common Law the Incumbent could not plead any Plea which concerned the Right of Patronage, and therefore it would be unreasonable that he only should be named in the Writ, who at Common Law could not defend the Patronage; and that he who has the Patronage, and might defend the Right thereof should be omitted in the Writ. But this Diversity was agreed, That when by the Judgment in the Quare Impedit the Inheritance, Estate, or Interest of the Patron in the Patronage is to be devised by the Judgment in the Quare Impedit brought by J. S. where J. N. who presented, and his Clerk receiv'd, ought to be nam'd in the Writ. But when the Inheritance, Estate, or Interest, shall not be devised by the Judgment, then if other Disturber be nam'd in the Writ, he need not name the rightful Patron in the Writ; and with this Diversity the Books agree. And after the Plaintiff Hall, perceiving the Resolution of the Court, discontinued his Suit, and lost his Presentation illa Vice. — Sav. 107. S. C. And it seems there, that the Writ was adjudg'd good. See 108. at the End. — S. C. cited Cro. J. 651. in the Case of Savil v. Thornton. — See (P. c) pl. 1. in the Notes. — 7 Rep. 26. b. cites 7 H. 4. 25, 37. That because the Presentation was only recover'd, and not the Advowson, nor the Patron put out of Possession, the Writ was adjudg'd good without naming the Patron. Ibid. 26. b. — So where the Patron died before Writ brought, the Writ is well brought against the Incumbent.

7. In Quare Impedit the Incumbent pleaded, *Quod ipse Nilil habet, nec habere clamat &c. Nisi de Presentatione Georgii Sidenham Militis not nam'd* in the Writ, and demanded Judgment of the Writ; upon which, the Plaintiff did demur in Law; And it was argued for the Plaintiff, That the Writ was well brought without naming the Patron; for if a Quare Impedit be brought against the Patron and Incumbent, and the Patron dieth, pendant the Writ, the Writ shall not abate. 9 H. 6. 30. *It might be, that the Plaintiff did not know, nor could tell who presented the said Incumbent, but he findeth the Incumbent a Disturber by his Incumbency;* and if of Necessity such Patron ought to be named, then if such an Usurper should die before the Writ brought, he which hath Cause of Action should be Remediless. And by Anderson and Periam, the Writ is good enough for the Reason aforesaid. Le. 58, pl. 83. Mich. 32 Eliz. in C. B. Hall v. Bishop of Bath.

least the Manor to the Earl of L. for Years, who assign'd It to Sir G. S. and he granted it to C. R. The Vicarage voided, R. presented D. who was admitted &c. C. R. assign'd to H. the Plaintiff. D. was deprived. H. brought Quare Impedit against the Bishop and the Incumbent for disturbing him to present. The Incumbent pleaded, that he claimed nothing in the Advowson of the Vicarage, but is Vicar of the Church of the Presentation of the said G. S. who is alive, not nam'd in the Writ, and demanded Judgment of the Writ; And upon Demurrer it was resolv'd, That the Writ should abate, and that the Patron ought to be named in the Writ; 1st, Because the Patronage will in this Case be recover'd against him that has nothing in the Patronage; and there is no Reason, that he who is Patron shall be ousted thereof, when he is a Stranger, and not Party to the Writ; and especially when, as in this Case, he might be made Party thereto. 2dly, At Common Law the Incumbent could not plead any Plea which concerned the Right of Patronage, and therefore it would be unreasonable that he only should be named in the Writ, who at Common Law could not defend the Patronage; and that he who has the Patronage, and might defend the Right thereof should be omitted in the Writ. But this Diversity was agreed, That when by the Judgment in the Quare Impedit the Inheritance, Estate, or Interest of the Patron in the Patronage is to be devised by the Judgment in the Quare Impedit brought by J. S. where J. N. who presented, and his Clerk receiv'd, ought to be nam'd in the Writ. But when the Inheritance, Estate, or Interest, shall not be devised by the Judgment, then if other Disturber be nam'd in the Writ, he need not name the rightful Patron in the Writ; and with this Diversity the Books agree. And after the Plaintiff Hall, perceiving the Resolution of the Court, discontinued his Suit, and lost his Presentation illa Vice. — Sav. 107. S. C. And it seems there, that the Writ was adjudg'd good. See 108. at the End. — S. C. cited Cro. J. 651. in the Case of Savil v. Thornton. — See (P. c) pl. 1. in the Notes. — 7 Rep. 26. b. cites 7 H. 4. 25, 37. That because the Presentation was only recover'd, and not the Advowson, nor the Patron put out of Possession, the Writ was adjudg'd good without naming the Patron. Ibid. 26. b. — So where the Patron died before Writ brought, the Writ is well brought against the Incumbent.

Incumbent alone. Ibid. cites 4 E. 3. 11. a. b. — because by the Statute 25 E. 3. 7. he is enabled to plead. Ibid. 27. cites Pl. C. 178. b.

8. Quare Impedit, in which the Plaintiff made a Title, for that the Defendant was presented upon a Simoniackal Agreement; The Archbishop pleads, That he claimed nothing but as Ordinary; and the Defendant Sowton pleaded in Abatement, that the Patron is not named in the Writ; and upon Demurrer it was adjudg'd, that he need not, because his Title is not in Question, but is admitted, and the King claims in Affirmance of his Title and Right but by the Offence of the Defendant; and the Patron shall not be put out of Possession by Recovery in this Action, for he has had the Fruit of his Presentation; but his Clerk shall be remov'd for his Simony, and therefore need not be made Party; per Charlton J. but 3 Justices contra, who doubted because the Patron is not only to have his Clerk admitted, but likewise to continue. And Respondeas Ouster was awarded. 3 Lev. 16. Patch. 33 Car. 2. The King v. the Archbishop of York and Sowton.

2 Show. 467. pl. 160. S. C.

(B. d. 8) Pleadings. Count.

1. **I**N a Quare Impedit the Plaintiff ought to declare, That the Presentment was made in Time of Peace. F. N. B. 33. (K) in the new Notes there (c) cites 18 E. 2. Quare Impedit, 175.

In a Quare Impedit the Plaintiff declared, That Sir George

Horner was seised in Fee of the Manor of Dowling, to which the Advowson was appendant; that he presented J. S. who was admitted, instituted &c. and that afterwards he granted the next Avoidance to the Plaintiff; that J. S. died, and it belongs to him to present; and upon Demurrer to this Declaration, it was objected, that it was ill, because the Plaintiff did not allege, that Sir G. H. presented Tempore pacis. And it was admitted, That so it ought to be, where the Plaintiff makes his Title by a Presentation, but here the Title is by being seised of the Manor, to which the Advowson is appendant; and so the Difference is between Advowson in Gross and Appendant. And Per Cur. when one shews a Precedent Right, and then alleges a Presentation in Pursuance of that Right, as here the Plaintiff does in Sir G. H. it needs not to say Tempore Pacis; otherwise, where no Title is alleg'd, so that the Presentation only makes the Title. Mod. 236 Hill. 28 & 29 Car. 2. Strode v. Bishop of Bath and Wells, and Sir George Horner and Masters. 2 Mod. 184. S. C. & P.

2. If a Man recovers an Advowson against another in a Writ of Right, when the Church voideth he shall present; and if he be disturbed, he shall have a Quare Impedit, and allege the Presentment in him against whom he recovered, without alleging any other Presentment. F. N. B. 33. (I)

So a Man shall have a Quare Impedit, and allege a Presentment by

his Predecessor, and it shall be good, without alleging a Presentment in himself. F. N. B. 33. (I) cites 17 E. 3.

3. In Quare Impedit the Plaintiff counted of a Presentation in the Time of his Predecessor, and another in the King who seised by reason of the War between him and France, and that he was restor'd, and well; for the last Presentment did not make him Title, and also he ought to make Mention of the last Presentment. Br. Quare Impedit, pl. 19. cites 40 E. 3. 10.

Br. Double. pl. 122, cites S. C. — See of Presentment of the Guardian, this does not

make Title, and yet he ought to make count upon it. Br. Quare Impedit, pl. 19, cites 40 E. 3. 10 — By which the Defendant said, That J. P. was seised of the Manor of D. with this Advowson appendant, and presented, Que Estate he has, Issue is, that the Advowson is in Gross, Prius; and the other that is in Gross, Prius. Ibid. — But by 20 E. 4. 13. and 21 E. 4. 15. where both Claim by one and the same Person, the one as Appendant, and the other in Gross, there the Appendency shall be travers'd; but where they claim by several Persons the Presentation shall be travers'd, and therefore the Law seems to be where it is in Gross, as in the present Case. Br. Quare Impedit, pl. 19. cites 40 E. 3. 10.

4. Quare

4. Quare Impedit by the King, Quod permittat ipsum *Presentare ad Prebendam vocat. Major Pars Altaris in Ecclesia de Sarum*; and because he did not shew in what Church in Sarum, nor of what Saint, nor in what Sarum, (for there are two Sarums) therefore ill. Br. Quare Impedit, pl. 20. cites 40 E. 3. 17.

5. Quare Impedit by the King, who counted during the Time that the *Temporalities were in the Hands of the King*; the Defendant demanded Judgment of the Count, because it is not shewn for what Cause they were seised into the Hands of the King; et non Allocatur. Br. Quare Impedit, pl. 23. cites 42 E. 3. 7.

6. Quare Impedit by the King, and counted that B. was seised of the Manor with Advowson appendant, and presented; and from B. the Manor and Advowson descended to E. and from E. to R. who now is in Ward of the King; and the Church voided, and the King presented, and the Defendant disturbed him; The Defendant said, That there never was such E. in *rerum Nature*, et non Allocatur; for this is a Misprision in the Mesne Conveyance. Contra, if he had mistaken the Name of B. or R. now in Ward; for those are material, quod nota; and therefore the Writ good. Br. Quare Impedit, pl. 26, cites 43 E. 3. 7.

As Quare Impedit by the King by reason of Ward, he

counted of Presentment in the Grandfather of the Infant, and of another Presentment in himself; by reason of the Custody &c. and the Defendant said, That the Grandfather of the Infant was seised, and presented, and gave the Advowson, and a Manor to which it was appendant, to M. and her Baron in Tail; and the Baron died, and the Church voided, and M. presented, and yet the King had Writ to the Bishop for Default of M. at another Day; but it was held there, that the Plea of M. is no Plea, because she did not deny the Presentment of the King upon her. Br. Quare Impedit, pl. 29. cites 43 E. 3. 14.

Br. Omission. pl. 2. cites S. C.

8. In Quare Impedit the Plaintiff counted that F. was seised of a Manor with the Advowson appendant, and presented, and made their Descent from F. to R. and from R. to F. and from F. to F. now Plaintiff; and the Defendant alleged, that W. was seised and presented, and it descended to T. who presented, and from T. to W. who presented, and from W. to the Defendant, and the Plaintiff voided the one Presentment by the Nonage of F. and the other 2 by the Nonage of another F. and the Defendant alleg'd Omission in one who was Elder Brother to F. thro' whom the Descent is made. Judgment of the Writ, and the Writ awarded good, notwithstanding an Omission of one Mesne in the Conveyance in this Action. Contra, in Writ of Right; and it may be, that he in whom Omission is alleg'd was never seised, and therefore the Writ awarded good. Brooke says, It is a Wonder that all the Presentments alleg'd by the Defendant were suffer'd; for it seems to be double at this Day, and also it seems that he ought to have traversed the Appendancy alleg'd by the Plaintiff. Br. Quare Impedit, pl. 32, cites 44 E. 3. 21.

9. Quare Impedit by two Coparceners, and counted that their Ancestor was seised of the Manor of D. to which the Advowson is appendant, and presented F. his Clerk, who was instituted and inducted, and made the Descent to them; the Church voided, they presented B. who was instituted and inducted; and the Church voided, and so it belong'd to them to present; and so see they alleg'd two Presentments, and yet it is not challeng'd for double; and the Reason seems to be, that they ought to allege one in their Ancestor for Title, and then ought to speak of the other which they themselves made, and one of the Plaintiff's was summon'd and sever'd; and the Defendant said, that she who was summon'd and sever'd alien'd her Part to her, Judgment of the Writ; And after the said, That she alien'd her Part of the Land and Advowson before the Voidance, and before the Writ brought; And the Plaintiff's said, That they were seised of the Advowson in Common the Day of the Writ purchased, Absque hoc that she alien'd before the Voidance. Br. Quare Impedit, pl. 52. cites 11 H. 4. 54.

10. Quare

10. Quare Impedit, and counted of a Tail of a Manor to his Grandfather, to which the Advowson was appendant, and that his Father discontinued two Parts of the Manor and the whole Advowson, and that the Right of two Parts of the Manor and the Advowson descended to him as Heir in Tail, and thew'd How; and an ill Count; for the Right of two Parts of the Manor and the Advowson in Possession cannot descend; by which he said, That the Right of two Parts of the Manor and of the Advowson descended to him, and then well. Br. Quare Impedit, pl. 78. cites 19 H. 6. 30.

11. If the Declaration be *Admissus et Installatus*, without more, it shall abate. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

12. In Quare Impedit the Plaintiff counted that A. was seised of the Advowson as of Fee, and he took A. to Feme; and the Church voided, and he in Right of A. presented and had Issue and died; and the Church voided again, and he presented; and by the Opinion of the Court, because the second Presentation is not alleg'd in Right of the Wife, therefore ill; by which he amended his Count; quare Librum. Br. Quare Impedit, pl. 8. cites 23 H. 6. 8.

13. Where the Plaintiff counts of several Presentments to an Advowson in Gros, this is not double; For none of them is traversable but the last; For this makes the Possession; and if the last Presentment be omitted, the Defendant may plead it to the Count. Br. Quare Impedit, pl. 11. cites 33 H. 6. 32.

14. In Quare Impedit the Plaintiff made to himself Title, because King H. 4. was seised in his Demesne as of Fee and Right of the Advowson in Gros, and granted &c. and did not shew whether he was seised in Right of the Crown or by Purchase, or by the Dutchy &c. and yet good, per Cur. for there is no other Form, and see that it is said in Demesne of Advowson. Br. Pleadings, pl. 12. cites 34 H. 6. 34.

Br. Count,
pl. 18 cites
S. C.

15. In Quare Impedit the Plaintiff ought to allege Presentation, and it is not sufficient to plead a Recovery without it; because it may be that the Recovery was against a Deforcestor who claimed nothing in the Patronage; but Writ of Right of Advowson does not lie but against the Patron; per Prisot. Br. Judgment, pl. 51. cites 39 H. 6. 23.

16. He who has a Donative, or ought to make Collation, and is disturbed, shall have General Writ of Quare Impedit *Quod permittat ipsam Presentationem*, and shall have special Count; for there is no other Form of Writ. Br. General Brief, pl. 24. cites New Nat. Brev. fol. 33. (C) and (D)

So if he
makes Colla-
tion, and
does not pre-
sent. Ibid. pl.
28.

17. The Queen brought a Quare Impedit upon the Statute 13 Eliz. cap. 12. which enacted, that no Person shall be admitted to a Benefice with Cure &c. except he subscribe the Articles of Religion, and that all Admissions and Inductions otherwise shall be void; The Church remained void for two Years, and then the Queen presented, but in the Count it was not alleged, that the Church to which the Defendant was presented was a Church with Cure; and upon Demurrer to the Declaration it was held ill. And. 62. pl. 136. Trin. 24 Eliz. The Queen v. the Bishop of Lincoln and Cock.

18. Quare Impedit lies to present to two Parts of the Church of &c. for in a Church there may be several Portions to which Presentations may be made; as A. may have the 1st. B. the 2d. and C. the 3d. Part, and divers Patronages and Advowsons thereof, and if disturbed may have Quare Impedit, and declare of a Seisin of the 1st. or 2d. or 3d. Part, as the Case requires. And therefore the Plaintiff in the principal Case having declared that J. S. was seised of the Advowson of the said two Parts of the Church aforesaid, and presented &c. All the Judges held the Writ good, and well maintained by the Declaration; But if he had not declared of the Seisin of the Advowson of the two Parts, but that the Declaration had been (that he was seised of the two Parts and presented) according as the Writ mentioned it, the Writ and Declaration would

be abated. 2 And. 23. pl. 16. Pasch. 37 Eliz. Stanhopp v. Bithop of Lincoln.

(B. d. 9) Quare Impedit. Pleas. Good in General.

Br. Alienation, pl. 7. cites S. C.

1. **QUARE** Impedit by the King; the *Tenant of the King had Issue three Daughters and died*, and the *Tenements came to the King by his Prerogative*, and *Partition was made in Chancery*, and this *Advowson allotted to the one who took Baron and had Issue and died*, and the *Issue within Age and in Ward of the King*, and the *Prebend voided*, and the *King presented*. The *Defendant said*, that after this the *three Daughters made Partition to present by Turn*, and that the *first had her Turn*, and after the *second*, and the *third took the Defendant to Baron*, and had *Issue and died*, and this *Voidance now belongs to him as Tenant by the Curtesy*, and *shewed the Composition*; and because by the first *Partition in Chancery the King was ascertained of his Tenant of Record*, and this *new Partition, without Licence of the King, is an Alienation in Law without Licence*, therefore *Judgment pro Rege*; For it was agreed, that though *Partition be made between Parceners*, yet they are in by their common *Ancettor*, and may vouch as *Heir*, and have every one *Advantage as Heir*, yet by the *Partition in Chancery the one was sole Tenant of the Advowson*, and by the last *Partition to present by Turn all are Tenants thereof*, and *Writ of Right of Advowson shall be brought against all*, and before again the one alone, and so the *King has a Stranger to his Tenant*; *Quod Nota*; and therefore the *King recovered*. Br. Quare Impedit, pl. 73. cites 21 E. 3. 30, 31.

Br. Estoppel, pl. 5. cites S. C.

2. Quare Impedit by the King, and made *Title by Non-age of T. Son of J. W. and the Church voided*, because *M. H. the Incumbent thereof, was created Bishop of E.* Mombray said, the *Church did not void*, the *Advowson being in the Hands of the King*. But Norton said, to this he shall not be received, and *pleaded certain Estoppel that the King had certified the time of the Seizure, and the Age of the Infant, and what Day H. was sworn Bishop of E. and that a certain Year the Bishop was Treasurer of the King, and Commission made to him by Name of Bishop of E. to go in a Mesnage of the King to Rome, and shewed Record which proved the Tenure and the Age of the Infant, and that he at Request of the Great Men had received the Homage of the Infant, and made him Livery within Age*; and there it is agreed, that where the *King makes Livery to the Infant within Age generally, Fees and Advowsons do not pass without special Words*; but contra of *Livery made at full Age*, and upon the *Livery made within Age above were no special Words of Fees and Advowsons*, by which it was awarded, that the *King have Writ to the Bithop*. Br. Quare Impedit, pl. 74. cites 21 E. 3. 39, 40.

Br. Quare Impedit, pl. 97. cites S. C.

3. In Quare Impedit, the King made *Title to present to a Prebend, because the Temporalities of the Bishop were in his Hands by reason of the Death of R. late Bishop &c.* The *Defendant said*, That *Ne voida pas the Temporalities being in the Hands of the King by the Death of R.* this is a *Pregnancy*; for it suffices for the King if it be in his Hands by any other Cause. Br. Negativa &c. pl. 26. cites 24 E. 3. 55.

4. In Quare Impedit the Defendant shall not have his *Age*; nor *Protection nor Essoign de Servicio Regis does not lie*, nor such *Dilatories*, because the *Lapfe shall not incur*. Br. Quare Impedit, pl. 116. cites 43 Ass. 21. per Thorp J.

Br. Quare Impedit, pl. 46. cites S. C.

5. The *Plaintiff intituled himself by Presentation by A. who granted to him, and the Church voided, and he presented, and the Defendant disturbed*

turbed him ; and the Defendant said, That after this Presentment A. was seised and presented &c. and granted the Advowson to the Defendant, and the Church voided, and he presented ; and well, without shewing How A. came to it again after his first Grant. Br. Confels and avoid, pl. 10. cites 3 H. 4. 15.

6. In a Quare Impedit by the King it is a good Plea to shew that such a one was seised and presented, and the Incumbent admitted and instituted and died, and the Patron * [presented] this Incumbent who was admitted and instituted, in whose Possession the King by his Letters Patents which he shewed ratified, and confirmed his Estate ; Judgment if the King will impeach him, and a good Plea. Br. Quare Impedit, pl. 61. cites 14 H. 4. 36.

* Quare this? For the Year-Book and Fitzh. tit. Qua. Imp. 123. seem not clear.

7. In Quare Impedit it was agreed, that a Chantry may be founded without the Assent or Licence of the Ordinary, and where the King made Title by the Temporalities of the Bishop of L. to the Chanteries of St. T. in O. the Defendant said, That he and his Ancestors Time out of Mind have been Patrons of a Chantry of St. T. in the same Vill, and alleged Presentment in his Ancestor, absque hoc that this A. by whom the King claims founded any Chantry there, and no Plea, because he did not plead of the same Chantry ; For it may be another Chantry for any thing that is contained in the Plaint of the Defendant, and if the Defendant had pleaded that No such Church in the same County, there the Plaintiff should have had Writ to the Bishop ; Per Cur. Quod Nota. Br. Quare Impedit, pl. 5. cites 9 H. 6. 16.

8. In Quare Impedit the Defendant prayed Aid of the King, and had it upon Charter shewn, in lieu of Voucher, and yet it was agreed, that it is an Action which does not die with the Person ; For the Heir shall not have Action of Disturbance in the time of his Father ; and it was agreed, that a Man cannot vouch a Common Person in Quare Impedit, but shall have Warrantia Chartæ, and in lieu of this, Voucher of the King ; for Action does not lie against the King. Br. Quare Impedit, pl. 7. cites 9 H. 6. 56.

9. In Quare Impedit the Defendant said, That the Incumbent was presented, living the other Incumbent, and so is in by Spoliation. Br. Quare Impedit, pl. 13. cites 33 H. 6. 26. in a Note.

10. If I grant the next Presentation to J. N. which he enjoys accordingly, there, if at another Voidance the Grantee disturbs, and alleges the last Presentment in himself, the Grantor may confess and avoid it, by Reason that it was but for one Turn only. Br. Confels and Avoid, pl. 49. cites 13 E. 4. 2.

11. If a Man pleads, or otherways says that such a Church is void, he ought to shew how it voided, viz. By Resignation, Death, or otherwise by Deprivation &c. For if it voids by Death, it shall be try'd Per Pais ; and if by Deprivation, Resignation, Creation, or otherwise, this Voidance shall be tried by the Ordinary. Br. Quare Impedit, pl. 85. cites 15 E. 4. 25. Per Jenny.

12. Quare Impedit by the Lord H. and M. his Feme, against the Bishop, W. H. and others, and counted that certain Persons were seised of the Advowson in gross to the Use of the Plaintiffs and the Heirs of the Feme, who granted the Advowson to R. who granted the Advowson to the Plaintiff and the Heirs of the Feme, and shew'd Presentment, and that the Church voided &c. And the Bishop, the Patron, the Incumbent, and all the others join'd in Plea, and said that the said Feoffees were seised to the Use of the said W. H. and his Heirs Males, and that they presented absque hoc, that they were seised to the Use of the Lord H. and his Feme. And Per Keble, The Plea is not good, inasmuch as the Patron, Bishop and Incumbent have join'd in Plea where they ought to have sever'd ; and also he said that the Feoffees were seisd to the Use of W. H. in Tail, and does not shew the Commencement of it, inasmuch as it is of a special Estate, and

and also *W. H. has pleaded to the Right of the Patronage, where it appears that he is not Patron; and therefore ought to have said that Ne disturba pas.* Br. Quare Impedit, pl. 165. cites 13 H. 7. 18.

13. If 4 *Jointenants bring Quare Impedit*, and the one will not sue, he shall be *summon'd and sever'd*; but if he will *vary in Title*, there the *Writ shall abate without Remedy*; for then it appears that they have join'd upon several Titles; quod nota. Br. Quare Impedit, pl. 2. cites 26 H. 8. 5.

Le. 194 pl. 278. Mich. 31 & 32 Eliz. C B. Arundel v. Bishop of Gloucester and Chaffin. S. P. and seems to be S. C. and the Plea was held insufficient; for the Plaintiff counted upon a

a Disturbance

to him 1st November, and the Defendant intitled himself to an Incumbency 1st May after; so that the Disturbance set forth in the Count, is not answered by Traverse, nor confess'd nor avoided; for the Disturbance whereof the Plaintiff declared is confess'd. Afterwards it was mov'd that the Queen might have Writ to the Bishop, because her Title appears to be by Lapse, which is confess'd. But the whole Court were clear of Opinion against it; for tho' it appears that he was lawfully presented to the said Church, and so once lawful Incumbent, yet it appears also, That the Queen's Title is once executed, and so gone, and nothing remains in her; and now when the Defendant has lost his Incumbency by ill Pleading (as he may as well as by Resignation or Deprivation) the same shall not turn to the Queen's Advantage; for where the Queen presents for Lapse, and her Clerk is Instituted and Inducted, she has no more to do, her Clerk must shift as well as he can for the holding of it; for by what Manner soever he loseth the Incumbency, she shall not present again; otherwise it had been if she had been Patron. And afterwards the Plaintiff had a Writ to the Bishop.

Sec (Q a. 2)

(B. d. 10) Pleading Plenarty.

By the Common Law Plenarty, before the Writ of Quare Impedit brought, was a good Plea, but Plenarty hanging the Writ was no Bar at the Common Law; but now by this Statute Plenarty is no Plea in a Quare Impedit or Darrein Presentment, unless it be by the Space of six Months before the Quare Impedit brought; for if the rightful Patron bring his Action within the 6 Months, it is maintainable by this Statute, which short Purview doth remedy many Mischiefs at the Common Law. 2 Inst. 360.

But this Act doth not bind the King; for Plenarty by the Space of six Months is no Bar against him, but he may have his Quare Impedit when he will; for Nullum tempus occurrit Regi. 2 Inst. 361.

But some have taken a Diversity when the King claimeth the Advowson in his own Right in Jure Coronæ, and when he claimeth it in the Right of a Subject; for then he shall not be in better Case than the Subject was; As where the King was intitled to present in the Right of a Ward, and one did usurp, and the Church was full by the Space of six Months; and it was adjudged within 12 Years after the Making of this Act, that the King by this Plenarty was barr'd of this Quare Impedit; but since that Time the Law hath been otherwise taken. 2 Inst. 361.

Plenarty by 6 Months against the Queen is a good Plea, albeit she claim the Advowson by the King's Indowment. 2 Inst. 361.

And yet in All Cases, Plenarty by six Months is no Plea in a Quare Impedit; [As] if an Advowson be alien'd in Mortmain, and the Church becomes void, and a Stranger usurps, and his Clerk is in by six Months, yet the immediate Lord shall have a Quare Impedit within the Year; for the Statute of 7 E. 1 De

De Religiosis, giveth him a Year, and the immediate Lord half a Year after &c. and for that Cause also no Descent of Lands in the mean Time shall take away his Entry. 2 Inst. 361.

(B. d. 11) Pleadings by the Bishop.

1. **QUARE** Impedit by Sir J. Denham against the Bishop of E. and T. Chanon, and counted that the Advowson of the Abbey of St. Edes, was Appendant to his Manor of Hatland, and that W. his Father presented one B. Chanon of the Abbey, who of his Presentment was Admitted and Instituted, and convey'd the Manor to him by Descent, and that the Abbey voided by the Death of B. and he presented, and the Defendant disturb'd him; the Bishop said that by the Foundation the Abbot is elective by the Prior and the Monks who present him to the Bishop, and he shall examine and admit, and if he be able, then the Bishop shall admit and install, and put him in corporal Possession, and that the Abbey voided by the Death of B. and they elected C. and he upon the Presentment of him made to him, examined and found him able, and admitted and install'd him &c. and so claim'd nothing but as Ordinary; Judgment if without special Disturbance, Tort &c. It is no Plea without traversing the Title of the Plaintiff; for where he shows Title in Destruction of the Title of the Plaintiff, he ought to traverse &c. or confess and avoid the Title of the Plaintiff, notwithstanding that he claims nothing but as Ordinary; by which afterwards he travers'd abique hoc, that the said B. was admitted and instituted by the Bishop of E. at the Presentment of W. Father of the Plaintiff; and the other e contra. And per Port, The Bishop as Ordinary cannot plead any Plea which touches the Right of the Patronage, but a Disturber may, and here the Bishop is Disturber; for it appears that the Plaintiff presented to him, and also the Prior, and he accepted the Presentation of the Prior without inquiring De Jure Patronatus, and therefore a Disturber, quod Newton and Paslon concesserunt, that he ought to have inquir'd &c. as well as between two Patrons. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

2. Quare Impedit was brought by H. against B. and the Bishop and the Incumbent, and counted that he was seized of the Advowson as in gross, and this as of Fee and of Right &c. Tempore Pacis &c. and died &c. and the Church now voided &c. and he presented, and the Defendants disturb'd him, and the Bishop said that he claimed nothing but Admission, Institution and Induction; and prayed Judgment if without special Disturbance &c. and the Plaintiff said that the Church voided by the Death of J. N. as above, and that he presented such a Day, Year and Place W. P. his Clerk, and required him to admit him, and he refus'd, and so disturb'd him &c. to which the Bishop said that the Defendant presented such a Day, and that after in the Feast of St. Hugh the Plaintiff presented, by which he refus'd, and made Inquiry De Jure Patronatus, (which was afterwards adjudg'd no Plea, because he did not say what End the Inquiry took) which Refusal in the said Feast of St. Hugh &c. is the same special Disturbance &c. abique hoc, that he refus'd after the said Feast, & hoc &c. to which the Plaintiff said that he such a Day and Place after the Feast aforesaid, required him to admit &c. and he refus'd; and upon this they were at Issue; and after by the Opinion of the Court the Issue is misjoined, and the Plaintiff has departed from his first Plea; for he alleg'd Disturbance such a Day, which the Bishop has justified, and he comes and alleges another Disturbance, by another Refusal another Day, and therefore this is a Departure; by which they repleaded; and the Bishop said that the Defendant presented E. his Clerk the same Day that the Plaintiff presented F. his Clerk, and so

Br. Traverse per Sans, pl. 21. cites 33 H. 6. 13. 14. S. C. ——— Br. Negation, pl. 3. cites S. C.

the Church became Litigious; and that the Law of Holy Church is, that when it is Litigious, the Ordinary is not bound to present till it be inquired De Jure Patronatus, and this at the Suit of the one Patron or the other, or their Incumbent; and that if the 6 Months pass, that he present by Lapse, and none required him within the 6 Months, by which he made Collation to one T. his Clerk by Lapse, & hoc &c. and demanded Judgment &c. and upon this the Plaintiff demurr'd; and there it is agreed that the Jure Patronatus shall be sued at the Costs of the Party or his Clerk, and the Bishop is not bound to be at the Costs, for he is Judge in this Case; but where the Court writes to the Bishop to certify Bastardy, or Matrimony, or the like, there he shall do it at his own Costs; for there he is a Minister. But per Littleton, The Justices of the Special Assize are not bound to sit without their Fee, nor the Chancellor to make Writs without his Fee for the Writing &c. And afterwards it was adjudged that to say that the Church was Litigious, as above, and the 6 Months pass'd, and he made Collation by Lapse, is a sufficient Plea without the other Matter of the Jure Patronatus, which is alleg'd before; but this is only Surplusage, and the Plea is not the worse; for the Jure Patronatus is only for the Excuse of the Bishop, therefore it seems it had been a good Replication for the Plaintiff to have said, that he or his Clerk required to have Jure Patronatus, and he refus'd; and therefore as to the Bishop, Judgment was given that the Plaintiff take nothing by his Writ. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12 & 32. 34 H. 9. 11. 38. & 35 H. 6. 18.

Br Office
devant, pl.
11. cites
S. C.

3. Quare Impedit by the King against the Ordinary, and counted that *W. N. was seised of the Manor of S. with the Advowson appendant, and presented J. &c. who was Admitted, Instituted and Inducted &c. and gave the Manor with the Advowson to E. L. in Tail, the Remainder to the right Heirs of W. L. in Fee &c. and that such a Day and Year it was found before the Escheator &c. that the said E. L. died seised of the Manor in Tail, and that the Manor was held of the King in chief, and that T. L. is Son and Heir within Age &c. and that such a Day and Year the Church voided, and the King presented B. and the Bishop disturb'd him, and the Bishop said Protestando that E. L. died seised in Fee of the said Manor, and Pro Placito that E. L. gave the said Manor to M. and others in Fee saving the Advowson, and after E. L. granted the next Presentation to Butler, and after M. and the others gave the Manor to E. L. and his Feme and Lewis E. and after E. died, and the Church voided, and B. presented to him C. at D. he being ready to take Horse; and the Bishop commanded him to attend upon him at N. within the same Diocess within three Days, to examine him and inquire his Ability; and he did not come, nor six Months after, by which the Bishop made Collation by Lapse, absque hoc that W. L. gave the said Manor to E. L. in Tail Priit &c. And afterwards Anno 15 H. 7. 7 and 8. all the Justices at Length held, That the Ordinary shall have Time to be advow'd; for in the Examination he is Judge and not Officer, and he ought to give him Time and Place convenient, and need not give Notice to the Patron that he did not come to be examined; for he has not refus'd him. Br. Quare Impedit, pl. 91. cites 14 H. 7. 21. and 15 H. 7. 6. 7. & 8.*

(B. d. 12) Pleadings by Incumbent.

The Incumbent shall not by this Statute have Licence to

1. 25 Ed. 3. Stat. 3. cap. 7. **I**TEM, Because that many Presentments to divers Benefices of Holy Church, as well of the Patronage of Lay People as of People of Holy Church, which are void ly six Months, whereof the Collation of such Benefices by Lapse of Time was devolute, and of Right pertaining

pertaining to the Ordinaries of the Places, were recovered by the King by the Title of Judgments thereof given, of the Assent of the said Patrons, in Deceit of the said Collations so made reasonably by the said Ordinaries, in which Pleas the Ordinaries nor their Clerks, to whom they did give such Benefices, were not received to shew nor defend their Right in this Behalf, nor to counterplead the King's Right so claimed, which is not reasonable; wherefore the King, by the Assent of the Parliament, willed and granted for him and his Heirs, that when Archbishops, Bishops, or other Ordinaries, have given a Benefice of Right devolute to him by Lapse of Time, and after the King presenteth and taketh his Suit against the Patron, which per-case will suffer that the King shall recover without Action tried, in Deceit of the Ordinary, or the Possessor of the said Benefices, that in such Case, and all other Cases like, where the King's Right is not tried, the Archbishop or Bishop, Ordinary or Possessor, shall be received to counterplead the Title taken for the King, and to have his Answer, and shew and defend his Right upon the Matter, although that he claim nothing in the Patronage in the Case aforesaid.

the Plaintiff, unless the King be Plaintiff; and the Mischief was, that tho' the Incumbent had been 20 Years in Possession, yet if the King had brought Quare Impedit against him and another as Patron, who would not

appear, the King should have ousted the Incumbent, because Nullum Tempus occurrit Regi, and for that Reason was the Statute made. Fitzh. Tit. Incumbent, pl. 11. cites M. 15 H. 4.

The Confession of the Patron or supposed Patron, before this Statute bound the Incumbent, but now the Incumbent may plead the Title of the Patron, but the Ordinary cannot; for the Statute does not extend to him. Jerk 25. pl. 47.

Scire facias upon a Recovery by the King in Quare Impedit; the Incumbent Defendant said, that after the Judgment of N. Prentice of the King, was instituted and induced by the Bishop by the same Judgment &c. And yet hastily, The same Statute which gives the Incumbent to plead against the King in Quare Impedit, gives him Answer in Scire facias upon Judgment therein, quod non negatur; by which they were at Issue; quod nota. Br. Incumbent, pl. 4. cites 46 E. 3. 13. — 4 S. C. Cited 2 Le. 85. pl. 112. in Case of Ognel v. Patron. — S. P. Fitzh. Tit. Incumbent, pl. 10. cites H. 50 E. 3. — 7 Rep. 26. cites S. C. and says, The Mischief before this Statute was, That by the faint Pleading or Confession of the Patron in Quare Impedit, the Incumbent was without Remedy; but that this Statute enables the Possessor &c. (which is the same Thing as to say the Incumbent after Induction, as was held 4 D. 1. 4 H. 8.) to counterplead the Title taken for the King, and to have his Answer &c. 7 Rep. 26 a Patch. 51 Eliz. Cases of Quare Impedit — — This Case is D. 1. b. pl. 3. Bataille v. Cook, where the Patron claimed Title to the Advowson by the Ancestor of the Plaintiff; and the Incumbent would have pleaded the same Plea, but was ousted by this Statute, which enables the Possessor to plead in Bar, but in this Case the Incumbent was not induced, and before Possession he is not Incumbent, and so could not plead Ne disturba pas &c.

This is intended where Action is commenced; for if an Incumbent be in, and is ousted by Admission and Induction, the Incumbent of the King, he has no Remedy but to sue by Petition to the King. Br. Incumbent, pl. 1. cites 2 H. 4. 17.

The particular Cause of this Law, is for the Relief only of the Ordinary that hath collated by Lapse, and of the Clerk that is so collated, that they may both plead to the Title against the King, which, when you consider it, was a necessary Law as against the King more than against Common Patrons; for the Statute not being bound by Lapse of Time, if the common Patron suffered a Lapse, and the Bishop collated lawfully, yet if the King pretending himself Patron, brought a Quare Impedit against the Ordinary and Incumbent, there was no Means for them to save themselves, since they could not deny the King's Title and maintain the Patron's, in whose Default the Lapse took Place; but the Statute gives Remedies likewise in like Cases, by express Words; so that Cases of like Nature are rather remedied by Letter than Equity. And therefore first in the Case of Lapse, a common Person might by Practice have turned out a lawful Collatee in one only Case, and that was this, A common Person, or true Patron, presents within 6 Months, and the true Patron himself presents not in Time; whereupon the Ordinary collates by Lapse, against whom the Pretender brings a Quare Impedit, because his Clerk was refused, wherein he must needs prevail, if his Title be good, and it must be taken for good, because neither Ordinary nor Incumbent could deny it; for De non apparentibus & de non existentibus eadem est ratio. This is one of the like Cases meant in the Statute; for all in other Cases the Lapse is an equal Title against all common Persons. But the commonest like Case, and that which extends farthest, is the Purview; for every Incumbent that is called a Possessor, as well by Presentation as by Collation, is allowed by the Words of the Law to counterplead the King's Title, and to shew and defend his own Right upon the Matter, tho' he claim nothing in the Patronage in the Case aforesaid; Note all the Words, for they have all their Weight; for first the Incumbent must be a Possessor; so that if he have his Presentation, Admission and Induction upon the lawful Title, yet he remains as he was before, under the Mischief of the Common Law, because he is not a Possessor according to the Letter of the Law, but by Induction. And further, That tho' he be a Possessor, he must, by the Letter and Meaning of this Law, as well shew and defend his own Right as counterplead his Adversary's; and therefore clearly he cannot make himself Patron Imparsoner of the Presentation of J. S. and defend himself by the Title of J. D. under whom he claims not, though that were sufficient to destroy the Plaintiff's Title, by Confessing and Avoiding, or the like; Neither can he counterplead the Plaintiff's Title, but must also make a Title to himself by the Word and Meaning of this Law, which I speak not to bind the Incumbent by the Patron's Plea, whereof I will speak hereafter when I come to the Incumbent's Plea; but touching Plea of the Ordinary upon this Statute, I hold plainly that he can no otherwise plead than he could at the Common Law, but where

he hath collated actually by Lapse; for tho' the Incumbent in by Presentation be also admitted to plead by the Meaning of this Law under the Word (Like Cate.) because the Cate is like indeed, yet the Ordinary's Cate before Actual Collation, is no ways like in Cate; for he hath gotten no Interest for himself nor his Clerk in the Church. And therefore if the Incumbent, instituted only at the Presentation of another, be not within the Relief, much less shall the Ordinary, that hath no Interest, but an Office only, that ought to be indifferent to all Patrons, and maintain no Side. And yet more, *if the Incumbent which is inducted, be Defendant in Quare Impedit* (which may plead by the Statute) and *do resign hanging the Writ, he hath lost his Privilege of pleading to the Title by the Statute*; for as it was granted him to defend his Possession, so when his Possession is gone, there is no Cause for him to use it, which Reason also turns strongly against the Ordinary, where there is no Possession under him; for yet that Incumbent that hath resigned *may plead, as he might have pleaded at the Common Law*. And Note that Cate of the Person resigning hanging the Writ, which the Person may plead against him, to defeat him of his Plea that he might once have had hanging the Writ; whereas in a *Præcipe quod reddat*, if the Tenant plead a Release, the Demandant cannot say that he had aliened hanging the Writ, but is estopped; the Difference is, because in that Cate of the *Præcipe*, the Demandant by his Writ admits him Tenant, but in the Quare Impedit he is not named an Incumbent, but a Disturber only. Neither is the Suit for the Incumbency directly, but for the Patronage or Presentation; and therefore in the Writ of Right of Advowson, the Incumbent is never named; neither, if the Defendant recover against his Patron, shall he be removed. Per Hobart Ch. J. who said that he had been the larger in this Discourse, because he saw the Inheritances of Advowsons so incumber'd by wilful Usurpations, and Disturbances of pretended Patrons, Ordinaries and Clerks, and the Multiplicity and Perplexity of several Pleas of the Defendants, be they never so many, whereof, if any one pass against him, he is bur'd, and the Uncertainty and Variety of the Learning upon it, that it is almost impossible, if a true Patron be put to his Action, but he will be tired. Hob. 319. 320. Sir William Elvis v. Archbishop of York.

Fr. Quare Impedit, pl. 66. cites S. C.—Br. Incumbent, pl. 5. cites S. C. — 2. The Incumbent should not have answered *to the Title of the Patron by the Common Law* in Quare Impedit, but now *by the Statute* he shall plead if the Patron pleads faintly; but where his Patron is bound by Judgment, or such like, the Incumbent is bound likewise. Br. Incumbent &c. pl. 8. cites 38 E. 3. 31. Per Thorpe. Fitzh. Tit. Incumbent, pl. 4. S. P. cites M. 2. R. 2.

S. P. But if it had appeared, then he should not be permitted to plead where the Patron pleads, and therefore both Issues were taken; and so see that the Statute is not intended that the Incumbent shall plead, but where the Patron makes Default, or will not plead; quod nota, good Reason. Br. Incumbent &c. pl. 13. cites 39 E. 3. 30. — S. C. Cited 7 Rep. 26. d. in Case of Hall v. the Bishop of Bath and Wells. 3. Quare Impedit against T. & J. N. who was Incumbent, and Counted of the Presentation of his Predecessor, and T. traversed the Presentation, and made Title to have Writ to the Bishop, and J. N. pleaded the same Plea, And there it is said, That at the Common Law, the Incumbent shall have no Plea, because he has nothing in the Advowson, and the Statute was for the Mischief, that if the Patron would not plead, the Incumbent might plead; But now, when the Patron pleads, there is no Mischief, and therefore the Incumbent need not to plead; But Brooke makes a Quare, if the Patron will maintain the Issue faintly; And after, because it did not appear by the Writ that he is Incumbent, but stands indifferent, and where several are named, it may be that all are Patrons, therefore the Plea was suffered; quod nota. Br. Quare Impedit. pl. 104. cites 39 E. 3. 20.

So the King in a Quare Impedit counted that King H. was seised, and presented one A. and that King H. died, and so the Advowson descended to himself; ti at A. died, and he presented B. and that now B. is dead, and so it belongs to him to present. The Defendant being Incumbent, traversed the Institution and Induction of B. without making Title to himself. Arg. Le. 46. pl. 58. cites 43. E. 3. 19. 4. In Quare Impedit by the King the Count was, that the King himself was seised, and presented one B. who at his Presentment was received &c. and that B. died, by which it belonged to the King to present; The Defendant being the Incumbent pleaded that the said B. is still alive; And that Plea was allowed without any other Title made to himself. Arg. Le. 46. pl. 58. cites 43. E. 3. 19.

In Quare Impedit the Incumbent shall plead against the King by the Statute, and against a Common Person by the Equity; and Quare Impedit lies not against the Incumbent alone, but where the Pope or the King presents. Br. Incumbent, pl. 17. cites 9 H. 4. 32. — S. P. Per Babington. 5. Note, by the Opinion of all the Justices that in Quare Impedit brought by another than the King against Patron and Incumbent, the Incumbent shall not have Answer to the Title of the Patron, because the Statute does not give it but against the King. Contra, it is held at this Day by the Equity of the Statute. Br. Incumbent. pl. 3. cites 44 E. 3. 12.

ton; But per Paston he might have pleaded against a Common Person by the Common Law, but not against the King. Br. Quare Impedit. pl. 6. cites S. C. — S. C. & P. cited - Rep. 26. in the Case of Hill v. the Bishop of Bath and Wells — * S. P. Pl. C. 178. b. Mich. 4to. Maria in the Case of Hill v. Gra. g.

6. An Incumbent shall plead *all Pleas save those which go to the Right of the Patronage*, and this it seems by the Common Law, but now by the Statute he may plead of the Title of the Patronage. Per Brudenel Ch. J. Br. Incumbent &c. pl. 11. cites 14 H. 6. 31. S. P. per Brud. Ch. J. Br. Presentation, pl. 23. cites 14 H. 8. 2.

7. If the Patron would confess the Action or Title, yet the Incumbent may plead in Bar. Br. Incumbent &c. pl. 11. per Brudenel Ch. J. cites 14 H. 6. 31.

8. Quare Impedit, the Defendant said, That T. H. is seized of the Manor of D. to which the Advowson was and is appendant, and the Church voided by the Death of G. and T. presented him, by which he was admitted 6 Months before the Writ purchased, Judgment Si Actio. And per Danby he is only Incumbent, and therefore the Plea does not lie in his Mouth; But per Newton & Cur. the Patron may have the Plea, and so may the Incumbent, the Reason seems to be in as much as by the Statute the Incumbent may plead. Br. Quare Impedit. pl. 146. cites 22 H. 6. 14. But Br. Quare Impedit, pl. 134. cites 16 E. 4. 11. it was held per tot. Cur. that this was no Plea for the Incumbent, nor for any

other, but for him against whom the Writ of Right of Advowson lies, which lies only against the Patron; for to the Writ it is no Plea, because he does not give a better Writ against any Person certain; and to the Action it is no Plea, because he who pleaded it does not intitle himself to the Patronage. Br. Plenary, pl. 9. cites S. C.

9. The Incumbent shall plead the same Plea as the Patron pleads; quod nota. Br. Incumbent. 1. cites 33 H. 6. 13.

10. Quare Impedit by the Abbot, and counted of a Voidance by Deprivation of one J. The Defendant said that the Church was full of humbels 6 Months before the Writ purchased, and the said J. made Default in the same Writ, Et non allocatur, without answering to the Deprivation; and after he shewed how he had sued Repeal, and that he was in, and because he did not plead certainly, therefore Non Allocatur. Br. Quare Impedit. pl. 113. cites 39. H. 6. 19.

11. In Quare Impedit against two, the one pleaded as Patron &c. and the other pleaded the same Plea, and that the Patron presented him to the Bishop, who would not Admit nor Institute him, which is the same Disturbance &c. and demanded Judgment Si Actio. And per Brian and Hawes it is a good Plea; For he cannot say, Ne disturba pas; For in Fact this is a lawful Disturbance, and at Common Law Incumbent might plead against a Common Person, but not against the King, quære inde; But this is now remedied by the Statute; But Keble contra, and that he cannot try the Right of the Patronage, and that Dissessor, Pernor, Incumbent &c. shall have Plea to excuse them, but not to try the Right of the Benefice; Quære, and see the Statute of Westminster 2 cap. 5. of Plenary. Br. Quare Impedit. pl. 157. cites 2 H. 7. 14. S. C. cited 7 Rep. 26. a. in the Case of Hill v the Bishop of Bath and Wells.

12. The King brought a Quare Impedit against the Bishop and his Collatee by his Lapse; The Bishop pleaded a Plea, which was held good, and the Collatee pleaded that he is Parson Imparsoned of the Church afore said Ex Presentatione Praesati Episcopi in Forma, & ex Causa praallegata. It was said by Ysley, That it should be Ex Collatione, and not Ex Presentatione; For that it is no more than Collation; And Coningsby said, That the Plea of Ex Causa praallegata is not good by the Incumbent where he does not join in Plea with the Bishop, but shall shew the Matter as specially as the Ordinary, because he is a Stranger to the Plea of the Ordinary; And the Justices said plainly, That the Plea of the Incumbent is not good, Pro Causa antedicta. Br. Quare Impedit. pl. 91. cites 14 H. 7. 21. 15 H. 7. 6. & 7 & 8. S. P. For the Plea of the Incumbent ought not to refer to the Plea of the Bishop. Br. Incumbent pl. 6. cites 14 H. 7. 21.

13. Where a Clerk is in without Presentation (as where the Dean and Chapter of Paul's presented the Dean by the Name of B. and not by the Name of Dean, and this Presentation was also without Writing) or by Error to be admitted, such Incumbent is not aided by the Statute to plead in Bar; For there is no Presentation in either of these

Cases; And the *Statute requires an Incumbent presented.* Jenk. 199, 200. pl. 18. cites it as resolved.

14. An Incumbent presented and inducted may at this Day plead the Right of Patronage of his Presentor, where the Patron confessed, or made Default, or pleaded faintly; But *cannot plead the Right of Patronage in another*, than in him who presented him, Jenk. 200 pl. 18. says it was so resolved; And that so are 16 E. 4. & 14 H. 8. to be understood.

15. When the *Incumbent pleads the Presentment of a Stranger*, he must *show that the Stranger had a Title*, and that he was seised of the Advowson &c. or that he was seised of a Manor, to which &c. But where he pleads that he was *in for 6 Months of the Presentment of the Plaintiff himself*, or by *Collation by Lapse* by the Ordinary, there he need not make any Title. Agreed per Cur. Noy 30. in the Case of Lister v. Crameel.

Het. 1. S. C. adjudged —
Hutt. 96.
S. C. but
S. P. does
not appear.

16. In Quare Impedit the Defendant, the Incumbent, pleaded, *That he is Persona Impersonata* of the same Church *Ex Presentatione Regis* &c. Exception was taken, because he said he was *Persona Impersonata*, and does *not say, Tempore Impetrationis Brevis*, sed non allocatur; For it is inferred by the Writ brought against him, and if he be Parson Imparsonee before the Writ brought against him, it is sufficient, and divers Precedents were cited in the New Book of Entries, as Fol. 494. 405. 407. to that Purpose. Cro. C. 104. 105. pl. 6. Hill. 3 Car. C. B. Lady Chichesley v. Thompson and the Bishop of Ely.

17. Adjudged that the Incumbent cannot plead to the Title of the Parsonage, that he *Est Persona Impersonata* of the Presentation of the Patron, and the saying that *Fuit* is not sufficient. Agreed. March. 159 Hill. 17 Car. Palmer v. Hudde.

(B. d. 13) Double Pleas.

Br. Double.
pl. 134. cites
S. C. according'y.

1. **T**HE King brought Quare Impedit, and intituled himself to the *Moiety of the Advowson*, because the Father of the Defendant was seised and presented &c. and died, and the Defendant, Heir to him, was outlawed in Trespass, and the Church voided by the Death of the Incumbent of the Father &c. The Defendant said that the Church is severed into 3 Parts, and shewed certain, *Absque hoc* that the said Incumbent was in by the Presentment of the Father of the Defendant, and the Plea awarded Double, viz. the Church divided into 3 Parts, which by the Justices, is a good Plea to the Writ, and the Traverse goes in Bar of Action; quod nota. Br. Double. pl. 85. cites 22 Ass. 33.

Br. Double.
pl. 134.
cites S. C.

2. In Quare Impedit the Defendant pleaded, *That N. the Tenant granted the Land, and the Advowson to him, who presented twice, and shewed who, and so is he seised of the Advowson* &c. and note the last Presentment goes to the Writ, and the Deed of the Grant to the Action, and so Double; But because he concluded upon the one Matter viz. the Seisin &c. therefore it is not Double. Br. Double. pl. 56. cites 24 E. 3. 37.

3. In Quare Impedit, the Plaintiff intituled himself as *Appendant to his Land in Ward*, the Defendant said, *That after the Death of the Ancestor, he entered, and is yet seised, Absque hoc, that the Plaintiff is possessed of the Land, and that the Ancestor of the Infant held of one A. who held over of the Plaintiff, Absque hoc, that he held immediately of the Plaintiff.* This is Double. Br. Double. pl. 135. cites 24 E. 3. 55.

In Quare
Impedit, the
Plaintiff

4. *Two Presentments of Fee Simple are Double*; Contra, upon Estate Tail. Br. Quare Impedit. pl. 101. cites 24 E. 3. 77.

made Title by Gift in Tail, and alleged one Presentment in the Donor, and another in the Donee; And the best Opinion was, That it is not Double; For to say that *Ne dona pas* answers to all, and so of several Descents 33 H 6 And it was said that one Presentment may be alleged in the Ancestor, and another in the Guardian by Chivalry by Nonage of the Heir, and good Br. Quare Impedit. pl. 125. cites 4 E. 4. 3. — Br. Double pl. 97. cites S. C.

Two Presentments alleged, are Double ; per Brooke, but Brudnell Contra ; For the first shall be taken for Title, and the other for Conveyance only. Br. Quare Impedit. pl. 149. cites 12 H. 8. 12. — S. P. Br. Double. pl. 112. cites 13 H. 8. 13.

5. In Quare Impedit the Plaintiff counted that the Abbot and his Predecessors have used Time out of Mind at every Avoidance of the Churches of C. to present a Clerk to the Plaintiff and his Ancestors, and he over to the Bishop, and alleged Possession that he had so presented C. B. who was admitted and instituted ; and that C. B. after resign'd, and the Abbot has presented to the Ordinary now Immediately, and so disturb'd him. And Per Grene and Skip. Prescription and the Possession alleged by the last Presentment is double ; and the same Law of 2 Presentments, quod concordatur in the Case of *Odingsfeis* 33 H. 6. Br. Double, pl. 67. cites 24 E. 3. 78.

6. Quare Impedit by the * King, and he counted upon 2 Presentments, and not double. Contra in Case of a Common Person. Note a Difference. Er. Double, pl. 22. cites 43 E. 3. 14.

* S. P. For he may plead several Mat- ters, and the Party shall

answer to all ; Quod nota Br. Double, pl. 57. cites 14 H. 7. 26. — S. P. For he may allege as many Presentations as he will ; quod nota ; Per Cur. quia Rex &c. per *Prerogativam*. Br. Double. pl. 82. cites 38 H. 6. 33.

7. In Quare Impedit the Defendant pleaded to the Writ, That where the Plaintiff supposed the Voidance by the Death of R. it voided by the Death of W. Judgment of the Writ, and that the Brother of the Plaintiff, whose Heir he is, alien'd one Acre and the Advowson appendant to the Brother of the Defendant, whose Heir he is, and his Brother presented, and the Church voided &c. and not double ; for he who pleads to the Writ in Quare Impedit ought to make Title ; for otherwise they shall not have Writ to the Bishop ; quod nota, Br. Double, pl. 23. cites 43 E. 3. 25.

8. Quare Impedit by the King by reason of the Avoidance during the Temporalities of the Bishop being in his Hands ; the Defendant said, that the Church did not void whilst the Temporalities were in the King's Hands, and pleaded Ratification of the King of the Presentation ; this is double. Contra, if he relies upon Ratification of the King ; but after he waved the Plea, therefore quare. Br. Double, pl. 125. cites 7 H. 4. 37.

9. Quare Impedit by the King against a Prior who had taken Gift of a Manor and Advowson in Fee to hold in proper Use without Licence, and the Prior pleaded Letters Patents of the King made to him then Tenant of the Manor, and this by *Concessimus* & *Confirmavimus*, and by Judgment this is single enough ; for by reason it was pleaded to the Prior, then Tenant of the Land, it can't enure by way of Grant, but by way of Confirmation only. And Per Cheney and Westbury, because 'tis all by one Deed, which is entire, it cannot be double. Br. Double, pl. 9. cites 6 H. 6. 22.

But Brooke says, See often elsewhere that a Feoffment with Warranty is double if he does not rely upon the Warranty.

Br. Double, pl. 9. cites 6 H. 6. 22.

10. Quare Impedit brought by H. against B. and the Bishop and the Incumbent, and counted that he was seised of the Advowson as in Grofs, and this as of Fee and of Right &c. and presented T. his Clerk who was admitted &c. in Time of Peace &c. and died &c. and the Church now void ; and he presented, and the Defendants disturb'd him. B. said, That W. was seised of the Manor of D. to which the Advowson was appendant, and presented his Clerk, and after W. infeoffed S. &c. who gave in Tail to the Baron and Feme, who were seised, and presented, and convey'd the Manor to the Defendant as Heir in Tail ; and that he leased to Q. for ten Years, during which Term the Plaintiff presented by Usurpation, and now the Term is determined, and so now it belongs to him to him to present ; And so by the Title and Usurpation he confess'd, and avoided the Plea of the Plaintiff. The Plaintiff said, That during the Gift in Tail F. his Ancestor, whose Heir &c. presented one D. his Clerk, who was admitted &c. Absque hoc that the Church was appendant to the said Manor at the Time of the Gift, or ever after ; And the Opinion of the

Br. Double, pl. 17. cites 33 H. 6. 12, 13. accordingly. — For where a Man intituled himself to a Vallein Regardant or Common Appendant, and the other alleged Unity of Possession in the Manor or Land to which &c. and travers'd the

*the Regard-
ance or Ap-
pendance, this
is double; for
each is suffi-
cient Matter.
Per Pilfort,
Ibid.*

the Court was, That this is double; for the Presentment before the Gift made the Advowson in Gross against all; and the Traverse of the Appendancy is another Matter, and therefore double. But by all the Justices, If the Plaintiff had said, *That he himself presented, as he declar'd, Absque hoc that the Advowson was appendant at the Time of the Gift*; this had been a good Plea. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12, 32. 34 H. 6. 11, 38. And 35 H. 6. 18.

*And Per Pri-
fort and 2
others, of Ad-
vowson in
Gross, if the
Plaintiff
counts of se-
veral Present-
ments, this is
not double;
for none is
traversable*

11. In Quare Impedit the Plaintiff counted that one J. S. was seised of the Minor of D. *Ad quod Advocatio prædula pertinet*, and presented one J. N. and alleged Gift en Tail to one M. his Ancestor, and Descent, and that the Heir presented upon another Avoidance; and tho' he alleg'd several Descents to himself as Heir, yet upon long Argument it was agreed, That the Count was enough single; for the Gift is the Effect, and only traversable; and the Descents are only Conveyances, and therefore it is not double; And so judgment, Quod respond' ultra; But Littleton pray'd Bill to be sealed of the Exception, and had it. Br. Double, pl. 16. cites 33 H. 6. 32.

but the last Presentment, and if the last be omitted, the Defendant may plead it in Abatement of the Count. Br. Double, pl. 16. cites 33 H. 6. 32.

12. In Quare Impedit the Defendant shew'd Conveyance of Estate in Tail, viz. *Seisin in Fee in M. who made a Feoffment in Fee of the Manor and Advowson appendant, and retook in Tail; and after discontinued the Manor, and after presented to the Advowson &c. his Clerk, and then he died, and so convey'd Remitter to the Issue in Tail*; and this Matter is not double, for he cannot convey the Remitter without expressing these Matters, which are the Conveyance of it, and can't aver the one without the other; and therefore it is not double. Per Vavisor, Davers, and all; for the one cannot appear without the other. Br. Double, pl. 92. cites 5 H. 7. 36.

*In Quare
Impedit the
Plaintiff al-
leg'd, that N
P. sold of him*

13. In Quare Impedit the one Presentment in the Ancestor of the Plaintiff, and the other in the Guardian is not double. Br. Double, pl. 150. cites 4 E. 4. 3. and 7 E. 4. 20.

*certain Land and an Advowson, in Chivalry, and presented &c. who was received &c. and that a Guardian in Right of the Heir presented &c. and that N. Tenant is now dead &c. the Heir in his Ward, and so it be-
long's to him to present &c. and the Count awarded good notwithstanding the 2 Presentments, for it is pur-
suant, For the Presentment of the Guardian only is no Title. Br. Double, pl. 56. cites 24 E. 3. 37.—
Br. Double, pl. 134. cites S. C. accordingly. — Br. Quare Impedit, pl. 88. S. C.*

14. So, of the one in the Ancestor, and the other in Tenant for Life. Br. Double, pl. 150. cites 4 E. 4. 3. and 7 E. 4. 20.

15. Quare Impedit by M. and counted that J. was seised of a Minor *ad quod &c.* and after convey'd the Manor to the King by Act of Parliament, and the Church voided, and the King granted the same Avoidance to the Plaintiff; and by the same Patent granted to him the Fee Simple of the Advowson; and that the Plaintiff presented after the Grant, and the Defendant disturb'd him; And the Defendant demurr'd for Doubtfulness, and yet the Plaintiff recover'd by Award; for the first Presentment, and the Act of Parliament, and the Grant, and the Presentation of the Plaintiff, is only Conveyance. Br. Double, pl. 162. cites 10 H. 7. 7, 8.

(B. d. 14) Pleas in Bar.

1. **T**HE King brought Quare Impedit, and counted of a Presentation by J. S. who was seised in Fee &c. and of two others in himself by the Ward of the Heir of the said J. S. and that the Church is now void, and it belong'd to him to present, and the Defendant disturb'd him. Caund
said,

said, *The Clerk alleg'd by the King to be instituted &c. by the said J. S. was not received nor instituted by the Presentation of J. S.* And it seems to be a good Plea; for the 2 Presentments of the King during the Custody does not make Title to him nor to the Heir, without alleging Seisin by Presentation in the Ancestor of the Heir, or in the Feoffor of the Ancestor of the Heir, Et Adjournatur. Br. Quare Impedit, pl. 143. cites 42 E. 3. 4.

2. A Man may plead *Warranty and Assets descended* to bar the Plaintiff in Quare Impedit, or to have Scire facias after, if he has not Assets now. Per Finch, Quod Mombray Concessit. Br. Quare Impedit, pl. 31. cites 43 E. 3. 24.

3. Lessee may recover twice in two Quare Impedit against several Disturbers, by several Writs of Quare Impedit. Br. Parliament, pl. 8. cites 46 E. 3. 4.

4. Release of Actions Real is a good Plea in Quare Impedit. Br. Quare Impedit, pl. 7. cites 9 H. 6. 56.

Quare Impedit, and dies, his Heir shall not have Execution, and therefore it is not an Action Real Ibid. Release of Actions Personal is a good Bar in Quare Impedit. Per Porting. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

5. If the Plaintiff be nonsuited in Quare Impedit after Title made, this is a good Bar in another Quare Impedit, as Nonsuit in Writ of Right after Appearance. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

6. The Ordinary cannot plead in Bar in Quare Impedit as Ordinary; Per Bingham. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

7. There were several Persons and their Wives Plaintiffs in a Quare Impedit, the Defendant pleaded the Release of one of the Husbands pending the Writ; Adjudged, that this goes only in Bar of him who made it and his Feme, and that the Writ shall stand good for the rest. 5 Rep. 97. Mich. 39 & 40 Eliz. C. B. The Countess of Northumberland's Case.

Northumberland & al v. Hall & al. S. C.

(B. d. 15) Pleadings. *Traverse; Necessary*, in what Cases. See Traverse.

1. **I**N Quare Impedit, if the Plaintiff makes Title as appendant to such Land, the Defendant shall not say that it is in Gross or Appendant to other Land, without saying How, and traversing the Plea. Br. Quare Impedit, pl. 7. cites 9 H. 6. 56.

2. The Plaintiff in Quare Impedit said, That he was seised of two Acres in D. with the Advowson appendant, and presented &c. and now the Church is void again, and he presented, and the Defendant disturbed him; the Defendant said, That after the first Presentation of the Plaintiff he himself was seised of the Advowson as of Gross, and the Church voided, and he presented, and his Clerk in, and now it is void again, and he presented, Prout ei licuit &c. and well, without traversing the Appendency. Br. Confels and avoid, pl. 60. cites 15 H. 6. and Fitzh. Quare Impedit 77.

without answering to the Appendency alleged by the Plaintiff, which is in Effect avoided by the Defendant's Presentation after, and that in this Case the Plaintiff was without Remedy, (unless he could traverse the Presentation alleged by the Defendant) otherwise than by his Writ of Right of Advowson.

Br Quare Impedit, pl. 17. cites S. C. and P. and says, That then the Defendant would have alleged that the Advowson is

appendant to every second Avoidance, and in Gros to every other Avoidance to the Plaintiff, & non allocatur; For his own Plea proves that he has but the one Moiety of the Advowson appendant, and that the Plaintiff has the other Moiety in Gros; Quod Nota, Per tot. Cur.

But against the King he can not traverse the Title of the King without intitling himself;

3. In Quare Impedit, the Plaintiff counted, That the Advowson is in Gros, and intitled himself &c. The Defendant said, That the Moiety is to him Appendant to his Manor of D. and intitled himself to every 2d. Presentment, and the Plaintiff to every second Presentment as in Gros, and that this is his Turn; this is no Plea without Traverse that the Advowson is not in Gros, Prout &c. for otherwise it is only Argument; for he has not Confessed and avoided, nor Traversed. Br. Traverse per &c. pl. 31. cites 35 H. 6. 32. 33.

4. Between common Persons the Defendant may traverse the Title of the Plaintiff without intitling of himself, but then he shall not have Ward to the Bishop. Br. Quare Impedit, pl. 138. cites 21 E. 4. 1. 3. Per Noting. Ch. Baron.

*The Word in Brook is (Plaintiff) but seems mis-printed in all the Editions, and the Word in the Year-Book is (Defendant.)

5. In Quare Impedit the Plaintiff said, That he presented J. S. who was admitted, instituted &c. and after J. S. resigned, and he presented, and the * Defendant disturbed &c. The Defendant said, That before the Presentment of the Plaintiff he himself presented the said J. S. who was admitted &c. and after the Plaintiff presented this same J. S. the said J. S. then being Incumbent there, and so the Presentment of the Plaintiff void, and no Plea; Per Brian and Vavisor; in as much as the Defendant did not traverse that the Church was not void at the time of the Presentation of the said Plaintiff; but Townsende contra, in as much as the Lay Gents cannot take Consuance of the Voidance; but at last Keble took the Traverse. Br. Quare Impedit, pl. 164. cites 11 H. 7. 17.

6. Where the Plaintiff makes Title by Appendancy, and the Defendant alleges two Presentments after, there he need not traverse the Appendancy; For Usurpation is sufficient Title in Quare Impedit. Br. Quare Impedit, pl. 149. cites 12 H. 8. 12.

Br. Traverse per &c. pl. 2. cites S. C.

7. In Quare Impedit the Plaintiff counted that he was seised in Fee as of Gros, and presented A. &c. and after he died, and he presented now and is disturbed &c. The Defendant said, That before this he was seised in Fee as of Gros, and presented B. who was admitted &c. and after he granted the next Presentation to the Plaintiff who presented A. and he died, and so now it belonged to the Defendant to present, and did not traverse the Seisin in Fee of the Plaintiff; and well per Fitzherbert clearly, for he has confessed and avoided it; quod mirum; Br. Confess and avoid, pl. 1. cites 26 H. 8. 4.

(B. d. 16) Pleadings. Traverse. Good; In what Cases.

Br. Quare Impedit, pl. 85. cites 22 H. 6. 25. S. C. per tot. Cur.

1. IN Quare Impedit, the last Presentment is traversable, and not the Prescription alleged; Quod Nota. Br. Traverse per &c. pl. 99. cites 22 H. 6. 26.

But between common Persons the Presentment shall be tra-

2. In Quare Impedit, where the King is intitled to the Manor and Advowson Appendant by Ward of the Heir of his Tenant, and alleges Presentment in the Ancestor of the Plaintiff, and that the Ward fell to him, and the Defendant makes Title to him as in Gros, and traverses the Presentment, this is

NOT

not good ; For he *shall traverse the Appendancy* ; because this is the Title of the King ; Quod Nota, by all the Justices after great Argument. Br. Traverse per &c. pl. 257. cites 20 E. 4. 13. & 14.

makes Possession ; Per Collow Br. Traverse per &c. pl. 257. cites 20 E. 4. 13. 14. — But yet where both the Parties claim by one and the same Person, and the one claims in Gros, and the other is appendant, there the Appendancy shall be traversed ; Per Collow ; to which Littleton and Bryan Justices agreed. Br. Ibid — Br. Traverse de Office pl. 49. cites 20 E. 4. 14. and 21 E. 4. 1. S. C.

3. In Quare Impedit, the Plaintiff made Title that his Mother was seised and presented, and she died, and the Church voided, and the Bishop presented ; and the Bishop said, that the Church voided in the Time of the Mother of the Plaintiff, by which he presented by Lapse, abique hoc that the Church voided after the Death of the Mother of the Plaintiff, and the Court held the Abique hoc good. Br. Traverse, per &c. pl. 175. cites 1 H. 7. 9.

4. In Quare Impedit, the Plaintiff said, that he was seised of the Advowson &c. and presented, and now the Church is void &c. The Defendant said, That it is appendant to the Manor of D. whereof his Ancestor was seised and presented, and conveyed the Manor to himself by Alsque hoc that the Advowson is in Gros ; and no Plea, by reason that he did not deny the Presentation of the Plaintiff, which is material if the Advowson be in Gros or not, and therefore it was adjudged, that he should traverse the Presentment, and not the being in Gros. Br. Traverse per &c. pl. 384. cites 10 H. 7. 27.

titles himself by Presentation as Appendancy, and the Demandant pleads another Plea alsque hoc that the Advowson was appendant, this is a good Traverse. Br. Traverse per &c. pl. 384. cite 10 H. 7. 27. — So if he traverses the Presentment ; For every of them destroys the Demandant of the Plaintiff. Br. Ibid.

Quare Impedit by Lord Buckhurst against the Bishop of Chichester, and T. Bickley, for the Vicarage of Westfield, and counts, that the Advowson of the Vicarage appertains to the Rectory of Westfield, whereof he was seised in Fee &c. and presented M. Sackell, who was admitted &c. and indicted, and that the Vicarage was of the yearly Value of 8 L. and void by his Acceptance of another Benefice, and the Plaintiff presented, and the Defendants disturbed him &c. The Bishop pleaded, that Richard his Predecessor was seised of the Advowson of the said Vicarage in Fee, as of an Advowson in Gros, and collated to it (being void) one Maurice Berkley, who was inducted ; that the said Bishop died ; that the Defendant was created Bishop, and so became seised of the Advowson, and being so seised the Church became void, the said M. S. having taken another Benefice with Cure, and he collated the other Defendant T. Bickley, and traversed that the Vicarage appertained to the said Rectory ; and the said Bickley pleaded the same Plea. And upon a Special Demurrer to these Pleas, for that the Appendancy was not traversable, the Court agreed, That (though in many Cases the Books are, that the Appendancy is traversable, yet) as this Case is here, the Appendancy is not traversable ; for the material Parts of the Declaration are the Seisin in Fee, the Presentation, the Admission and Institution of his Clerk, and the Avoidance, so that it is not material, whether the Advowson was Appendant or in Gros ; and therefore when the Appendancy shall be traversed, it ought, upon the Matter shewn, to be material, or else the Traverse is ill. As if the Plaintiff counts of a Seisin of an Advowson in Gros, and that he presented, and the Church became void &c. if the Defendant says, That he was seised of the Manor to which the Advowson belongs, which became void, and he presented, abique hoc, that the Advowson was in Gros ; the Court held this to be no Plea, and cited 10 H. 7. 27. And it was said, That notwithstanding the Book there, the Law will be the same, where the Plaintiff makes Title as to an Advowson appendant, and divers Books were cited ; the Court adjudged the Plea ill 35 H. 6. 32. and there were also cited 27 H. 9. 33 E. 6. 12. 32. 34. Nota those and other Books. And. 269. pl. 276. Patch. 33 Eliz. Lord Buckhurst v. Bishop of Chichester and Bickley. — S. C. cited Vaugh. 10 and Ld. Vaughan says, pag. 11. that the Case of 10 H. 7. was principally relied on as warranting the Judgment, which he says it fully does, it being adjudged for the same Reason there, that the Seisin in Fee of the Advowson in Gros was not traversable, but the Presentation was, as it was in this Case adjudged that the Appendancy was not traversable but the Presentation. And Ld. Vaughan said he observed, That in Ld. Buckhurst's Case it is admitted, that the Plaintiff in the Case of 10 H. 7. did count that he was seised of the Advowson in Gros and presented, whereas he said, he noted that the original Case in the Book is, that he counted only upon his Presentation, and says, that probably it was so for the Reasons given by Lord Hobart in Digby's Case, that a bare Presentment is only militant when so alleged by the Plaintiff, and may be in such a Case as may prove the Defendant to have a Right of presenting at the present Avoidance, if no Right be alleged by the Plaintiff who he should present ; whence he collects, that in both these Cases of 10 H. 7. and this of the Lord Buckhurst, though there were a manifest Inconsistency in the first Case between the Plaintiff's Count, that he was seised of the Advowson in Gros, and presented, and the Defendant's Title, that he was seised of a Manor to which the Advowson was appendant (for it was impossible it should be appendant for the Defendant, and in Gros for the Plaintiff) and in the Ld. Buckhurst's Case, who counted that he was seised of the Rectory of Westfield, to which the Advowson of the Vicarage belonged, and the Defendant made Title, that he was seised of the Advowson in Gros, which Times were

were directly inconsistent, yet neither the Seisin in Gros in the first Case, nor the Appendancy in the last Case were traversable, but the Presentation of the Plaintiffs in both, which made their immediate Titles to present at the next Avoidance, whether there were a Seisin in Gros, or an Appendancy or not when they first presented. As in these two Cases the true Reason of the Law appears, why the Seisin in Gros of the Advowson, nor the Appendancy of the Advowson alleged by the Plaintiffs were not traversable, but only the Presentation, by these Cases the Lord Hobart's Scruple in *Drake v. Drake's Case* is satisfied, where he thinks, that if a Man has gained a Title by Usurpation, at the next Avoidance he must not declare, that he was seised in Fee formerly of the Advowson, and presented; but must declare specially of the true Patron's former Presentation, and then the Church becoming void, that himself presented, least otherwise by declaring that he was seised of the Advowson in Fee, the Defendant should trice him by traversing his Seisin, which was false, when in Truth he had a Right to present by Usurpation; For by these Cases it is clear, that the Seisin in Gros nor Appendancy are traversable, though alleged by the Plaintiff when he has gained a Title by Usurpation, but the Presentation ought to be traversed.—but if the Plaintiff declare the Advowson to be appendant to a Manor, and withal sets forth in his Declaration the Letters of Presentation to the Church as appendant, then the Defendant may traverse either the Appendancy or the Presentation; for though the Advowson were appendant, yet if the Plaintiff presented not, he had no Title. Whence he infers, that if the Plaintiff had counted of a Seisin of the Manor, to which the Advowson was appendant, without making the Presentment to be to the Church by Virtue of the Appendancy, the Traverse of the Appendancy had not been good; but it must have been of the Presentation, which might have been by Usurpation, notwithstanding the alleging barely of the Appendancy, as is resolved before in the Point in the *Lord Buckhurst's Case* in *Anderon*, and in the principal Case of 10 H. 7. But when the Court is of the Appendancy of the Advowson, and also of the Presentation to it as appendant, there could be no Usurpation according to the Resolutions in *Sir Henry Gaudie's Case* in the Lord Hobart and in *Green's Case* in the 6th Report of the Lord Cook; and he said, that the not observing of this Difference made the Reporter at the End of the *Lord Buckhurst's Case* deny this latter Part of the Case in 10 H. 7. because it was clearly against the Reason of the principal Case in 10 H. 7. and against the Resolution of the *Lord Buckhurst's Case*, if the Words of shewing the Presentment to have been as appendant had been omitted in the Case; but those Words make the latter Case in 10 H. 7. exactly to agree with the Judgments both in *Sir Henry Gaudie's Case* in Hob. and *Green's Case* in the 6th Rep. Per Vaughan Ch. J. Vaugh. 15. in Case of *Tufton v. Temple*.

Br Quare 5. Where the Title of the Plaintiff is to the Manor and Advowson Appendant, pl. 4 cites S. C. Impedit, pl. 4. and that the Defendant disseised him of the Manor, and the Defendant says, That it is Appendant to four Acres, whereof J. N. was seised and infeoffed him, there the Disseisin of the Manor is not traversable, but if it was appendant to the Manor or to the four Acres; Quod Nota. Br. J. Vaugh. 12. Traverse per &c. pl. 8. cites 27 H. 8. 29.

Hill. 17 &c. 18 Car. 2. and says, This Traverse was adjudged not good; For the Disseisin or Non-disseisin of the Manor was not material to intitle the Plaintiff to the Qua Imp. but all his Title was by the Appendancy of the Advowson to the Manor, and therefore the Traverse ought to have been, and was to be resolved, to the Appendancy which destroyed the Plaintiff's intire Title to present, and was also inconsistent with the Defendant's Appendancy of the Advowson to his 4 Acres.

S. C. Litt. 6. In a Quare Impedit for the Church of Chelmsford the Plaintiff set forth, That Sir T. M. was seised and presented P. and then leased the Manor, to which the Advowson was Appendant, to the Plaintiff, and that the Church became void by the Resignation of P. &c. whereupon it belonged to the Plaintiff to present. The Defendant confessed the Title of Sir T. M. and the Lease made to the Plaintiff, and pleaded over a Simoniacki Contract, upon which P. was presented, which being void by the Statute of 31 Hen. 8. the King presented the Defendant, who was admitted, instituted, and inducted thereon, Absque Hoc, that the Church became void by the Resignation of P. And upon Demurrer it was objected, That this Traverse is ill; For the Presentation is the principal Thing, which being contested and decided, cannot be traversed; But all the Court conceived the Plea good; For the Plea makes the Traverse argumentative only, that he might not resign; And being alleged that the Church is void Per Mortem vel Resignationem, or otherwise it ought to be contested or traversed; For that is the Cause of his Presentment, and the Issue ought to have been Si vacavit per Mortem, vel Deprivationem, vel Resignationem; For the Presentation, Admission, and Institution are conducing only to the Resignation, and the Resignation or Avoidance is the chiefest Matter. Cro. J. 61. pl. 6. Mich. 2 Jac. C. B. *Fenner v. Nicholson and Pasfield*.
by the Defendant, he shall not traverse the Seisin in Gros, nor the Appendancy; but because

cause somewhat else is necessary to give the Plaintiff Right to present, viz the Vacancy of the Church, either by Death or Resignation, or Deprivation, which the Plaintiff must allege, and which are inconsistent with the Defendant's Title, who claims not by Vacancy by Death, Resignation, or Deprivation, but by the Simony, therefore he shall traverse the Vacancy alleged either by Death, Resignation, or Deprivation, as the Case falls out, without one of which the Plaintiff makes no Title, and if the present Vacancy be by either of them, the Defendant hath no Title.

7. Sir Henry Gawdy Knt. brought a Quare Impedit against the Archbishop of C. Sir W. B. and H. R. Clerk, and counted that Sir R. S. was seised of the Manor of Popenko in Norfolk, to which the Advowson was Appendant, and presented M. his Clerk, who was instituted and inducted, and that Sir R. S. seised, bargained and sold the Manor to one Barow, who being seised, the Church became void by the Death of M. and so continued for 18 Months, whereby the Queen, in Default of the Patron, Ordinary, and Metropolitan, presented by Lapse one Snell, and by mean Conveyances derives the Manor, to which the Advowson is Appendant to himself, and that by Snell's Death it belongs to him to present, and is disturbed by the Defendants; The Archbishop claims nothing but as Ordinary Sede vacante of the Bishop of Norwich. Sir W. B. pleaded Ne Disturba pas and H. the present Incumbent pleaded, That he was Parson by the King's Presentation; and that long before Sir R. anything had in the Manor, Q. Elizabeth was seised of the Advowson in Gross in Right of the Crown, and presented Snell, and that she dying seised, the Advowson descended to King James, and he, being seised and the Church becoming void by Snell's Death, presented the Defendant H. R. who was instituted and inducted, Absque Loc, that the Advowson was Appendant to the Manor of Popenho, and thereupon Issue was joined. Hob. 301. pl. 330. Hill. 17 Jac. Gawdy v the Archbishop of Canterbury & al.

S. C. cited in the Case of Sir John Tufson v. Sir Richard Temple Vaugh. 13. and there says, That in this Case the Traverse of the Appendency by the Defendant was clearly good, and so admitted; for the Plaintiff Gawdy had no more, nor other Title to present, than by the Appendency of the Advowson to the Manor,

and the Incumbent's Death; and the Appendency to the Manor was inconsistent with the Title by the Advowson's being in Gross. And this proves that the Traverse is well taken to the Appendency of the Advowson when it is all the Plaintiff's Title to present, and is inconsistent with the Defendant's. But in Gawdy's Case, the Jury found specially, That Sir R. S. was seised of the Manor with the Advowson Appendant, and presented, and that the Incumbent dying the second of February, 1584. the Queen, the 15th of Feb. the same Year, presented Snell to the Church then void Per Mortem Naturali uli Incumbentis ibidem vacante, et ad nostram Presentationem Jure Prærogative Coronæ nostræ Angliæ spectantem, and her Clerk instituted by Letters of Institution Running Per Litteras Regiam Et Indubitam, ut dicitur, Patronam. And after the Death of Snell, King James presented H. Rone in these Words, Ad nostram Presentationem, sine ex pieno Jure, sine per Litteras Temporis, sine alio quocunque Modo spectantem, and referred to the Court, whether the Advowson were appendant to the Manor or not; It was adjudged, 1. That the Advowson remained Appendant, notwithstanding the Queen's Presentation 2dly, That her Presentation could not be by Lapse; for her Presentation, Institution, and Induction were in the same Month of February, wherein the Avoidance was. 3dly, If the Queen had presented by Lapse, it had made no severance of the Advowson. 4thly, That the Queen's Presentation made no Usurpation, because she presented, as supposing she had a Title in the Right of her Crown, as appeared by the Form of her Presentation, which is very remarkable, and therefore her Presentation was merely void; For it shall not be intended, the Queen took away another's Right against her own Will and declared Intention. 5thly, For the same Reason King James's Presentation of Rone, who by the Form of his Presentation supposed he had a good Title, when he had none, was also void; And this agrees with the Resolution in Green's Case the 6th Rep. that the Queen's Presentation, as made by Lapse, when she had no such Title to present by Law, but another Title either in Right of her Crown, or by Simony, or some other Way, is void, because she was mistaken in her Presentation, so if she presents by reason of some supposed Title in her Letters of Presentation, when indeed she has no Title at all, the Presentation is merely void, and though such Presentation makes a Plenary, so as to avoid Lapse, yet the right Patron is out of Possession, but may present 7 Years after, and if his Clerk be inducted, the former Presentee is immediately ousted. Vaugh. 13. cite. Hob. 301. Sir Henry Gawdy's Case.

8. In a Quare Impedit &c. the Plaintiff counted of a Seisin in Fee, and S. C. Jo. 11, that he presented &c. the Defendant pleaded, That he is Parson Imparsonne 12. Mich. &c. and that long before the Plaintiff anything had in the Advowson, 18 Jac. C. B. King H. 8. was seised in Fee, and presented, and died seised; And that it descended to Ed. 6. and so to Queen Mary and Elizabeth, who being seised accordingly, for the Jure Coronæ, presented one B. and after his Death, the now Plaintiff presented by Usurpation the Defendant; That Queen Elizabeth died seised, and it descended to King James who granted to one under whom the Defendant made Title, and the Defendant was instituted and inducted. The Plaintiff

12. Mich. 18 Jac. C. B. accordingly, for the Grant al- legal to be made by E. 6. and so Plena- full title

die seised, and therefore it ought to be traversed. 2dly, the Court held the Presentation of the Queen to be well confessed, by saying, that it was by Lapfe; For it is not alleged certainly, that the Queen presented as Vera Patrona, but

only that she is Seised in Jure Coronæ, and so seised, presented generally, without saying either the one Way or the other, and then the saying it was * by Lapfe was a good Avoidance—— [* The Original has the Word (Nor) but it seems misprinted]—— S. C. Winch 13, 14. but it seems very imperfectly printed; For after the Grant pleaded to be made by E. 6. and that the Presentment made by Queen Elizabeth was by reason of Lapfe, it says, "That Queen Elizabeth presented L. only And he "hoc, that E. 6. granted &c." So that the Words (presented L. only) must be printed probably according to the short Writing in the Manuscript, whence it was taken, instead of (presented by Lapfe only)—— S. C. Palm. 306. and there 111. it was resolved that the Traverse of the Dying seised of E. 6. was good, because it was material to the Title of the Defendant, and if this be true, it will destroy the Plaintiff's Title, and for that Reason he ought to traverse it; But if the Defendant had commenced *in Title* by the Presentment of the Queen, in such Case the Presentment should be traversed; And they agreed, That when the Queen presented by Lapfe, this is as Supreme Patron, and not as Supreme Ordinary; And therefore though the Allegation of the Defendant in Bar is, that the Queen presented, yet this is well confessed, and avoided by the Plaintiff in the Replication, when he says that those Presentments were by Lapfe; For Presentments by Lapfe maintain the Possession of the true Patron, and do not gain any Patronage from him.—— 2 Roll. Rep. 239. S. C. but not S. P.

replied, and took *Protestation of the Seisin of Q. Mary, Q. Elizabeth, and the Now King, and for Plea confessed the Seisin of the Plaintiff &c.* and the Seisin of H. 8. and Ed. 6. and then derived a Title to himself under a Grant made of the Advowson by Ed. 6. And that *Queen Elizabeth presented, but that the same was by Lapfe*; And that by the Death of her Presentee, it now belongs to the Plaintiff to present, *Abque hoc, that King Ed. 6. died seised &c.* And upon Demurrer it was objected, That he does not traverse the Seisin of Queen Mary and Elizabeth, and their dying seised, nor the Presentments alleged by reason of the Seisin in Fee, but only says, That they were by Lapfe; But as to this Point, the Court held the Replication well enough; For the *Dying seised was the principal Matter* to be traversed, and the other were but the *Consequents* thereof, and the Plaintiff may traverse any Part of the Defendant's Plea; And so a former Judgment was affirmed in Error; But because the Plaintiff in the first Action died pending the Plea, the Entry of the Judgment was *itaid*. Cro. J. 650. Mich. 20 Jac. B. R. Savil v. Thornton.

* Quære if this should not be (Bishop) without (Arch.)

9. In a Quære Impedit, the Plaintiff entitled himself by Grant of the next Avoidance, and that *T. C. was presented, admitted, instituted, and inducted*; And that the said Church became void by *Acceptance of a second Benefice* above Value; The * Archbishop pleaded a Plea, to which there was a Demurrer; and S. the *Incumbent* pleaded a Plea, and traversed that *T. C. was admitted and instituted* therein; and upon this they were at Issue, and a Writ awarded to the Archbishop for that Trial; But afterwards the Plea of S. being adjudged ill, a Repleader was awarded, because *the Induction, being alleged, ought also to have been traversed*; whereupon S. amended his Plea, and traversed the Admission, Institution, and Induction; Issue was joined thereupon, and found for the Plaintiff; Afterwards Error was brought, and among other Things it was assigned, that the Repleader was not well awarded; For that the Issue, which was joined before the Writ awarded to the Archbishop, was well enough, and needed not any Repleader; But all the Court Contra, and that the Repleader was well awarded; For the Induction being alleged, as well as the Institution, there ought to be a Traverse to it, which alters the Course of the Trial according to the Case in 22 H. 9. 27. & 2 H. 4. 17. so as it shall be tried Per Pais. Cro. C. 379, 380. pl. 6. Mich. 10. Car. B. R. Stevens v. Facone.

2 Jo. 8. S. C. by the Name of the King v. Jervis. adjudged for the Defendant.—— Mod. 2-6 Trin. 29 Car 5. The Arguments of

10. The King counts that *Queen Elizabeth was seised of the Advowson of the Church of Northfield in Gross in Fee in Jure Coronæ, and presented one W. &c. and so derives a Title to himself*, and that the Church became void by the Death of the said W. and so it belonged to him to present, but the Defendants disturbed him. T. J. one of the Defendants, pleaded, that before the Presentation of the Queen, his Ancestor R. J. was seised *en Fee of the Manor of N. to which* the Advowson of the Church was and is appendant, and that it became void by the Death of the then last Incumbent,

bent, and so continued for 2 Years; whereupon the Queen presented the said W. ly Lapse, and then derives a Title to himself of the said Manor and Advowson; And that his Ancestor, whose Heir he is, upon the Death of W. granted the next Turn to W. R. who presented J. S. who was instituted and inducted, and died, and that he presented the other Defendant Hunkley, and traversed the Queen's Seisin of the Advowson in Gross; the Attorney-General replied, and maintains the Seisin of the Queen, and so of the present King, and that the said W. R. presented by Usurpation, and traversed, that the Advowson of the Church was, or is, appertaining to the Manor, and upon a Demurrer to this Replication, the Defendant, the Patron T. J. had Judgment. Vaughan Ch. J. observed the Faults on both Sides in this Pleading; And first the Fault in the Plea where the Defendant had not well traversed the King's Title, it being only in Part; For he traversed only the Seisin, when properly he should have traversed the Seisin and Presentation of the Queen by reason of her Seisin, (viz.) Absque hoc, that the Queen was seised of the Advowson in Gross and presented. The Seisin of an Advowson, makes not a Title alone, nor is it traversable; But there being no Demurrer, nor Issue thereupon, he would not say any more to it. He said that the Defendant's Traverse was not necessary, because he had confessed and avoided the Queen's Presentation, by saying it was by Lapse; And if he had rested there, the Attorney General ought to have maintained his Count, and traversed the Queen's Presentation by Lapse, whereas he deserts making out the King's Title, and falls upon the Defendant's Title, viz.) that the Advowson was not Appendant; And he offers a Double Issue viz. that the Presentation of W. R. was by Usurpation, and that the Advowson was not Appendant to the Manor. Judgment for the Defendant. Vaugh. 53 to 56. Trin. 21. Car. 2. in C. B. The King v. Bishop of Worcester, Jervis and Hunkley.

11. Quare Impedit for the Church of Burton Dasset, in the County of S C. Vaugh. Warwick. The Manor of B. D. was divided, and the Defendant had 2 1. to 17. Parts of it, and the Plaintiff the 3d; and the Plaintiff set forth, That the Right of presenting every 3d Turn was appendant to his 3d Part, and that it Vaughan belonged to the Defendant to present twice, by reason of his two Parts; And says, It seems clear, to sets forth, that the Defendant had presented twice, and so it belonged That in all Cases of Quare Impedit, the Defendant may safely traverse the Presentation alleged in the Plaintiff's Count, to the Manor of Dasset will allow him to do so; For the Plaintiff has no Title without alleging a Presentation in himself, his Ancestor, or those from whom he claims the Advowson; and cited 1 Inst. 363. Nat. Brev. 35. and he differed this Case, from that in 1 And. 269. because there was a special Demurrer, and so might take Advantage of Matter of Form, and there the Defendant made a Title to an Advowson in Gross, and then the Presentment makes the Title; But where it is appendant, the Appendency makes the Title, and therefore must be traversed; And it hath frequently been so. Freem. Rep. 34. pl 43. Trin. 1672. Tuston v. Temple cites D. 260. 1 Cro. 61. Hob. 321. 10. Co. Chancellor of Oxford's Case. But no Judgment appears to be given.

But the Defendant must not traverse (that is deny) the Presentation alleged, when there was a Presentation; For then the Issue must be found against him; Therefore Lord W. under whom the Plaintiff claims, having presented, be it by what Right soever, there was no traversing his Presentation, But whatever Right the Lord W. presented by, the Plaintiff has no Right to present, unless the Lord W.'s Presentation, was by the Appendency to the 3d Part of the Manor; For he deriving no Title to the Advowson as in Gross, nor any other Way, but as belonging to the 3d Part of the Manor, which he derives from the Ld W. therefore nothing is traversable by the Defendant but the Appendency, which is found against the Plaintiff he has no Color of Title.

(B. d. 17) Pleadings. *Profert or Monstrans* of Deeds &c.
Necessary in what Cases.

1. **I**N Quare Impedit, if the Defendant makes a Title by Grant by Deed, and does not shew it, by which the Plaintiff demurs for the not shewing, which is adjudged against the Defendant, and that he ought to have shewn the Deed, this is *peremptory*, and the Defendant shall lose the Presentation. Br. Peremptory, pl. 70. cites 19 E. 3. and Fitzh. Monstrans 172.

Br. Mon-
strans &c. pl.
43. cites S. C.

2. In Quare Impedit by the King against the Bishop and Patron, it was agreed, that the Bishop need not to shew the Letters of Presentation. Br. Quare Impedit, pl. 65. cites 38 E. 3. 3. 8, 9.

3. If the King makes Presentation to the Bishop by his Letters Patents, the Patent belongs to the Ordinary. But if he makes Collation, it belongs to the Incumbent, and he shall shew it. Br. Monstrans. pl. 70. cites 9 E. 4. 16.

4. In Case of an Advowson, if the Party makes Title where it is by way of Defence, he shall shew Title. Per Brian. Br. Monstrans. pl. 60. cites 15. E. 4. 16.

So in Quare
Impe-
dit, the
Plaintiff
made Title,
That J. S.
was seised of
the Advowson,

5. In Quare Impedit the Plaintiff made Title, That J. S. was seised of the Manor of B. to which the Advowson is and was Appendant, and granted the next Presentation to B. and the said B. granted it to A. which A. granted to the Plaintiff; the Plaintiff must shew all the Deeds of the Grants. Per Fineux and Vavifour, Quod fuit Concessum. Br. Monstrans. pl. 109. cites 9 H. 7. 16.

and granted the next Presentation to one A. and after the said Advowson became void, and A. presented L. and after J. S. died, and the Advowson descended to T. S. who granted the next Presentation to B. and B. died Intestate, and the Ordinary sequestered and granted the Advowson to the Plaintiff, and the Incumbent died, the Plaintiff presented, and the Defendant disturbed him, and per Reade Brian, Davers, and Fineux, he shall shew all the Deeds, except the Deed made by J. S. For that does not belong to the Plaintiff, nor does he make his Title by it, nor does he claim by J. S. But Vavifour contra; For by this Presentment J. S. was out of Possession, and therefore he ought to shew the Deed to prove that it was not granted but for one Turn only. Br. Monstrans. pl. 111. cites 9 H. 7. 23.

6. In Quare Impedit the Plaintiff declared, that A. his Ancestor was seised in Fee of the Vicarage of B. in Gros &c. and so seised granted the next Avoidance to E. who granted it over to F. and that the Church becoming void by the Death of the Incumbent, the said F. presented J. N. who was admitted &c. that afterwards A. by Deed granted the said Advowson to Trustees and their Heirs, to the Use of A. for Life, then of B. his Son and Heir, and the Heirs Male of his Body; and for Want of such Issue, to the Use of the Heirs Male of the Body of B. And that during the Time of the Troubles in 1659. the Church voided, and that one W. R. by Usurpation presented T. S. who was put into Possession by the Persons then in Authority, and was afterwards by the 12 Car. 2. confirmed in the said Church for his Life; that the Church became void, and that it belonged to the Plaintiff as Heir in Tail of B. to present. The Defendants demurr'd, because the Plaintiff had not pleaded the said Grant by A. to the Trustees, with a Profert; for that here the Deed is necessary Ex Institutione Legis, to make it a good Grant, because without the Deed the Advowson will not pass. But it was resolved, That in this Case the Plaintiff shall not be compell'd to produce it. 1st. Because it does not belong to him who is only Cestui que Trust, but it belongs to the Grantees. 2dly. Because he has no Remedy in Law to get Possession of it. 3dly. He is in merely by Operation of Law, and not in the Per. Carth. 315. Trin. 6 W. & M. Reynell v. Long.

(B. d. 18)

(B. d. 18) *Issue. Upon what to be taken, and of what Things the Jury must inquire.* See (B. d. 19) pl. 5.

1. **I**N a Quare Impedit, besides the Point in Issue, the Jury ought Ex Officio to inquire. 1. *De Plenitudine Ecclesie.* 2dly. *Et ex Cujus presentatione.* 3dly. *Si tempus semestre præterit.* 4thly. *De Valore Ecclesie per Annum.* Jenk. 206. pl. 36.

2. In Quare Impedit by the King, who made Title by Seisin of the Temporalities of the Bishop of R. and that R. late Bishop of B. presented to the Hospital of C. R. his Clerk, who was received and instituted, and voided by Permutation made between R. and a Prebendary; and the Defendant said that the Hospital is not Permutable. And the Court said they would not try the Cause of the Voidance, but whether it voided while the Temporalities were in the Hands of the King, or not; quod nota. Br. Quare Impedit, pl. 69. cites 21 E. 3. 6. 7.

3. In Quare Impedit by the King against the Bishop of S. of the Prebend of H. he pleaded, that after the Voidance, the King presented E. who was received and installed, and the other that he was not received and installed, and the others e contra. Br. Quare Impedit. pl. 68. cites 21 E. 3. 50. & 40 E. 3. 17.

In Quare Impedit by the King, the Plaintiff pleads that he was received and installed, and the other that he was not received and installed, and the others e contra. Br. Quare Impedit. pl. 68. cites 21 E. 3. 50. & 40 E. 3. 17.

4. In Quare Impedit the Defendant pleaded, that the Church was full by 6 Months before the Writ purchas'd of his own Presentment, Judgment of the Writ; and there the Issue was taken if it was void or not, and not if it was full or not; quod mirum. Br. Quare Impedit, pl. 21. cites 40 E. 3. 20.

5. In Quare Impedit the Defendant said, That he is in of the Presentment of the same Plaintiff, and he said that he did not present, Prist; and the others e contra. Br. Quare Impedit, pl. 25. cites 42 E. 3. 8.

6. In Quare Impedit the Defendant said, that there is No such Church in the same County; and held a good Plea, by Reason of the Vishe. Br. Quare Impedit, pl. 33. cites 45 E. 3. 6.

*See, that Nul-
ted Pl. Sec.
in the same
County. And
said the
ciple quod reddat of the Manor of D. to say that there is No such Manor in the same County; and after
Issue was taken if there is a Church known by such Name in the same County or not. Ibid.*

7. Quare Impedit by the King, and made Title by Tenure of him as Appendant to the Manor of D. The Defendant said, but Not appendant, Prist, and the King said that he and his Ancestors Time out of Mind, have presented to it as appendant, Prist &c. and was not suffer'd to have such Issue, but to rely upon the Appendancy, viz. Appendant or Not Appendant &c. quod nota. Br. Quare Impedit, pl. 38. cites 46 E. 3. 30.

8. Quare Impedit was *Præsentare ad Ecclesiam de B.* The Defendant said that it was only the Chapel of B. and Time out of Mind had been, and is within the Parish of C. and because the Writ did not say Ad Capellam, he prayed Judgment of the Writ; and the Court being of Opinion that the Writ should abate, the Plaintiff said that the Church is Parochial, and the other said that it is a Chapel and Not Parochial. But the Court said they would be advised if this be an Issue. Br. Quare Impedit, pl. 77. cites 8 H. 6. 37.

9. Where a Man presents, and his Title is found upon a Fure Patronatus, and he sues to have his Clerk admitted, and after another presents, there, the Bishop might have admitted the Clerk of him who had the Fure, and

did not, but deferr'd till the Lapse fell, and then presented his own Clerk; in this Case he is Disturber against both the Presentors; and Issue shall be taken whether he who presented, and had his Title found, sued to have his Clerk admitted or not, and whether the second presented to him so hastily that he could not admit the Clerk of the first by due Process before the Presentation of the second or not; and so the Church not litigious. Br. Quare Impedit, pl. 80. cites 21 H. 6. 44.

Br. Replication, pl. 42. cites S. C.

10. In Quare Impedit the Plaintiff counted that his Ancestor was seised of the Advowson, and his Clerk in, and after he granted the Advowson to J. S. for Life, the Church voided, J. S. presented, and his Clerk in, and J. S. died, and after the Church voided, by which the Plaintiff as Heir of the Ancestor presented, and the Defendant disturb'd him. And it was held that he shall allege the one Presentation and the other; for the Presentation of the Tenant for Life does not make Title to the Plaintiff, nor the Presentation of a Guardian nor Termor, and the Defendant shall answer the first Presentation, and have Issue thereupon, and not upon Both. And per Littleton, He ought to answer to Both, but the Issue shall be upon the first only, and the Plaintiff shall not reply to him as to the second Presentment. Br. Quare Impedit, pl. 129. cites 7 E. 4. 20.

11. Quare Impedit of a Chantery where the Composition was, that if the Patron does not present within one Month, that then the Ordinary shall present; and the Jury was compell'd to inquire if the Month was put, and of the Value of the Chantery, and if it was void or not. Br. Quare Impedit, pl. 131. cites 13 E. 4. 3.

(B. d. 19) Judgment. When and How, and of the Entry thereof.

But if he makes Default after Continuance taken, he shall have Distress.

1. **I**N Quare Impedit, if the Defendant makes Default after Appearance, the Plaintiff shall recover immediately, and his Damages. Br. Process, pl. 27. cites 2 H. 4. 1.

And if it had been brought against the Patron and Incumbent, and found against the King, the Judgment should be Eat sine die. Per Markham. Br. Judgment, pl. 14. cites 3 H. 4. * 2. — * It should be 3. b. pl. 11.

2. Quare Impedit by the King against the Incumbent alone, and at the Nisi Prius it was found against the King. It was objected that Judgment ought not to be given; for the Patron is not named in the Writ; and yet Judgment was given that the Defendant Eat sine Die, without entering any Cause: So that by some, the Judgment shall be intended to be for the not naming the Patron, and so the King at another Time at no Prejudice; quare inde; for it seems that it shall have Relation to the Matter pleaded. And it was prayed that the Cause of the Judgment be enter'd. But per Thirn, It shall not be; for it appears in the Record; for if a Man takes Exception to a Count or to a Presentment, or Indictment, by which it abates, Judgment shall be viz. Pro eo quod it is insufficient in Law, therefore Nihil capiat; and the Cause shall not be entered, because it appears in the Record; quod Mark. concessit. And so it seems that the Words of the Judgment are all one to the Writ, to the Count and to the Bar; but this shall be expounded by the Matter which is pleaded, when it goes to the Writ or Count, and when in Bar. And Hull and Hank agreed that this Judgment shall have Relation to the Plea. Br. Judgment, pl. 14. cites 3 H. 4. 2.

If the Sheriff returns Nihil upon the Summons Pone & Distingas

3. In Quare Impedit the Sheriff return'd Nihil at the Summons, and Attachment at the Distress. And per Danby, Cott, Newton, Paston and Godred, the Plaintiff shall recover by the Equity of the Statute; but Martin and Strange contra. Br. Quare Impedit, pl. 152. cites 11 H. 6. 3.

in Quare Impedit, yet the Plaintiff shall recover. Per Aston. Br. Judgment, pl. 6. cites 27 H. 6. 5.

4. In a Quare Impedit against an Archbishop, Bishop and others, the Archbishop and Bishop plead that they claim nothing but the one as Metropolitan, and the other as Ordinary, the other Defendants plead other Pleas, the Plaintiff has Judgment against the Archbishop and Bishop to have a Writ to the Bishop; but in this Judgment against them, there is an Omission of the usual Clause; *Sed cesset executio quousque* the other Issues are tried; and in Truth no Writ issued before the Trial of the other Issues; the Issues are found for the Plaintiff, he had Judgment affirmed in Error. In this Case the said Omission was not erroneous: for it was after Judgment; and if it be Error, it is Error in Executione Judicii; and in this Case no Writ of Execution was sued out against them. Jenk. 323. pl. 36.

S. C. Roll. Rep. 303. Adjournalur 307. 398. S. P. Held accordingly by Coke, and afterwards Judgment was affirm'd Trin. 14 Jac. B. R. Grange v. Denny — 3 Bulst. 174. S. C.

5. Quare Impedit by H. against B. and the Bishop and the Incumbent; and as to the Bishop, whose Plea was allowed, Judgment was given that the Plaintiff take nothing by his Writ, and all the other Defendants confess'd the Action; and the Jury, which was ready to have pass'd upon the Issue, were put to inquire of the Value of the Church per Ann. which found 20 l. and therefore Judgment of double Damages (that is to say) of 40 l. was given for the Plaintiff against the other Defendant and the Incumbent, and the Judgment entered as well against the Incumbent as against the other; for now it was fully Lapse. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12 & 32. 34 H. 6. 11. 38. and 35 H. 6. 18.

6. Where a Man has a Quare Impedit against one, and the Defendant has a Darrein Presentment against the Plaintiff, and recovers in the Darrein Presentment, and the Plaintiff is Nonsuit in the Quare Impedit; the Defendant shall have two Judgments against the Plaintiff to have Writ to the Bishop in both Actions. F. N. B. 39. (1)

7. In a Quare Impedit the Bishop pleaded, That he examined the Presentee, and found him to be Schismaticus in veteribus, of which he gave the Plaintiff Notice, who did not present within 6 Months &c. and upon Demurrer the Court gave Judgment, that the Plaintiff recover against the Bishop his Presentation to the Church, and a Writ to the Metropolitan &c. because the Bishop is Party, *Et idem Episcopus in Misericordia*; afterwards a Writ of Enquiry of the Value of the Church was awarded; whereupon the Value and other Points of the Writ were found and return'd; and thereupon Judgment was entered again, viz. That the Plaintiff should have a Writ to the Archbishop ut supra, and that he recover Damages against the Bishop. *Et Præd. Episcopus in Misericordia*; and this was assign'd for Error, because the Bishop was twice amerced, which he ought not to be by Law. But it was answered, That the last Judgment was but a Recital of the first, and so to give a full Judgment of all, with the Damages, and not a new Judgment; for he can no more have two Writs to the Metropolitan than he can be twice amerced; but if it was erroneous, yet the first Judgment is good and perfect in it self, and shall not be impeached by any Error in the second, because the first was the Judgment which was at Common Law in a Quare Impedit; for before the Statute of W. 2. the Plaintiff never recovered any Damages in a Quare Impedit, and now he may waive the Benefit of that Statute, and take the Judgment at Common Law, if he will. Quod fuit concessum per tot. Cur. And so the first Judgment was affirm'd. 5 Rep. 58. b. Hill. 32 Eliz. upon a Writ of Error in B. R. Specot's Case.

And. 189. pl. 225. S. C. but not S. P. as to the Damages — 3 Le. 198. pl. 251. S. C. but not S. P. as to the Damages. — Goldsb. 35. pl. 10 S. C. but not S. P. as to Damage. — Jenk. 258. pl. 55 cites S. C. and S. P.

8. Where the King has Judgment by Default in a Quare Impedit, he, as well as a Subject, must by Suggestion on the Roll set forth his special Title. Per Holt Ch. J. 2 Salk. 559. pl. 2. Trin. 5 W. & M. in Case of The King &c. Bishop of London and Dr. Lancaster.

(B. d. 20) Judgment. *What recover'd, and who shall have Execution, and the Effect thereof.*

1. **BY** Quare Impedit a Man shall not recover the Advowson but the Presentment; but if he has Execution, all others besides the Incumbent, are thereby out of Possession. Br. Quare Impedit, pl. 7. cites 9 H. 6. 56.

2. If a Man recovers in Quare Impedit, and dies, his Heir shall not have Execution, and therefore it is not a Real Action. Per Rolfe. Br. Quare Impedit, pl. 7. cites 9 H. 6. 56.

(B. d. 21) Of Damages and Costs &c.

Before the making of this Act the Plaintiff in Qua. Imp. recovered no Damages, lest any Profit, the Patron should take, should favour of Simony, which

the Common Law did so detest; And this is the Cause that the King in a Quare Impedit recovers no Damages, because he could recover none by the Common Law; and the King is not within the Purview of this Act for the Cause shew'd in Boswell's Case. 2 Inst. 362 — S. P. Co Litt. 17. b.

The King shall not recover Damages in Quare Impedit for Lapse nor Disfranchisement. Br. Damages, pl. 15. cites 34 H. 6. 3. — S. P. Br. Prerogative, pl. 110. cites Fitzh. Quare Impedit 54 — S. P. For Damages are given only where there may be an Usurpation by W. 2. 5. And there can be no Usurpation upon the King. Jenk. 281 pl. 7.

Tho' the King declares Ad Damnum &c. yet he is not within the Statute. The first Part of the Clause for Recovery of Damages is, Si tempus Semestre transierit &c. Now He is not within this Part of the Clause for Recovery of Damages; for by his Prerogative he cannot lose his Right of Presentation, tho' the Bishop has collated. And then the second Clause (viz. Et si tempus Semestre non transierit &c.) is only dependant on the first; and so, as he is not within the 1st, he cannot be within the 2d. 6 Rep. 51. Mich. 3 Jac. Boswell's Case. — S. P. Le. 149. pl. 207. Trin. 36 Eliz. B. R. The Queen v. Bugbeard. — Cro. E. 162. Bugbeard v. the Queen.

Some think that the King shall recover Damages in a Quare Impedit; and it seems to them to be weak Reasoning, that he shall not recover single Damages, because he can't recover double; *Ad unumquemque majore ad minus* Negative non valet, valet e converso. The King shall have Benefit of any Statute tho' he be not named in it. Costs are given at Common Law in a Quare Impedit in the Time of E. 1. Fitzh. Quare Impedit 161. Damages were given to the King in a Quare Impedit, and those Judges were living when the said Statute of Westminster 2 was made. Jenk. 281. pl. 7. cites Brooke's Cases. 22 H. 8. 17.

And forasmuch as no Damages were in a Quare Impedit at the Common Law, and this Act after the Statute of Gloucester giveth Damages only, the Plaintiff shall recover no Costs. 2 Inst. 362. — S. P. Br. Costs, pl. 1. cites 27 H. 6. 10. For where Damages are given by Statute after the Statute of Gloucester in certain out of the Courts of the Common Law, a Man shall recover that which is limited in the Statute, and not otherwise; As in Decies tantum, the Plaintiff shall recover no Costs. Contra, it is said in Ravishment of Ward; and therefore he shall not have Costs in Quare Impedit. Br. Costs, pl. 1. cites 27 H. 6. 10. — At Common Law a Man should recover Costs in Quare Impedit, but contrary after the Statute, because the Statute gives now great Damages in Quare Impedit. Per Newton; But all the Argument there was for Damages. Br. Costs, pl. 25. cites 9 H. 6. 32. — But H. 22 H. 8. Spilman J. agreed with Newton. — S. P. Jenk. 234, pl. 36. — S. P. Jenk. 281, pl. 7. Ad Finem — S. P. Br. Damages, pl. 182. cites 9 H. 6. 30 — But Trin. 11 Ann. It was held Per tot. Cur. That where Judgment is given for the Defendant upon a Demurrer in Quare Impedit, the Defendant shall have his Costs. Rep. of Pract. in C. B. 4 Anon. [This seems to be by Reason of the Stat. 8 & 9 W. 3. cap. 11. s. 2.]

In a Quare Impedit against a Prior, Patron, and Incumbent, the Prior pleaded in Bar, and the Incumbent pleaded the same Plea, whereupon Issues are joined, the Prior dies, and the Issue is found for the Incumbent, he shall not recover Damages by this Act, for he cannot have a Writ to the Bishop and he continued in Possession. 2 Inst. 362. — S. P. 12 Mod. 547. in the Case of Pratt v. Rabel. — S. P. Br. Damages, pl. 182. cites 9 H. 6. 30. — Br. Quare Impedit, pl. 6. cites S. C. — But Per Newton in

Quare

5. In

5. In Quare Impedit the Plaintiff recover'd, and if there be no other Disturbance but the *Presentation of the King, who has revoked it*, and there was no other Disturbance by the Incumbent, the Plaintiff shall not have Damages. Br. Damages, pl. 171. cites 44 E. 3. 35.

But the Opinion of Kirton and Cand. was, That he shall not have it; for the Plaintiff and Defendant are each

6. Quare Impedit by *A. against 2. One made Title to have Turn, and the other the like*; and 'twas found, that it was the Turn of one Defendant, and likewise against the Plaintiff and against the other Defendant; and by the best Opinion he shall have a Writ to the Bishop against both, and Damages against the Plaintiff and the other Defendant. But Brooke makes a Quare; for there is no Original between the 2 Defendants. Br. Damages, pl. 173. cites 45 E. 3. 14.

After against the other, and each may recover against the other. Contra of one of the Defendants against the other, and therefore shall have Judgment against the Plaintiff only. But Finch Contra; and that the one Defendant shall have Attaint against the other. And Per Kirton, Where two Defendants are in Quare Impedit, and the one can shew Title to bar the Plaintiff, there it shall not be inquir'd if the other be a Disturber or not. And in Quare Impedit against two, if the one comes and pleads to Issue, the Inquest shall be taken between the Plaintiff and him, tho' the other does not come; and if it be found for the Defendant against the Plaintiff, it shall not be inquir'd nor Title made against the Plaintiff; but Finch deny'd it, and said that the one Inquest shall not be taken against the other. And so in Ward upon Priority the one Inquest shall stay the other &c. Br. Quare Impedit, pl. 35. cites S. C.

Br. Quare Impedit, pl. 36. cites S. C. and Plaintiff recover'd the Presentment also.

7. In Quare Impedit after 6 Months past, 'twas awarded, That the Plaintiff should recover Damages for 2 Years as well against the Incumbent as against the Defendant, because both had counterpleaded the Plaintiff's Title and the Disturbance; and yet it did not appear, whether the Ordinary had presented by Lapse or not. Br. Damages, pl. 185. cites 46 E. 3. 15.

8. 'Twas admitted, That in Scire facias in Nature of Quare Impedit upon Composition to present by Turn between Parceners the Plaintiff shall recover the Presentment and Damages. Br. Damages, pl. 36. cites 50 E. 3. 23.

Br. Quare Impedit, pl. 43. cites S. C. but says, That if he had made

9. In Quare Impedit the Plaintiff shall recover, and shall have a Writ, to the Bishop, and Damages upon the Default of the Defendant after Appearance. Quare, if it had been after a Continuance. Br. Damages, pl. 192. cites 2 H. 4. 1.

Default after Continuance, a Distingas should issue, as appears H. 6. R. 2. ——— Br. Quare Impedit, pl. 151. cites S. C.

10. In Quare Impedit the Plaintiff made Title by the Her in his Ward, the Defendant made Title by Coparcenary to present by Turn; to which the Plaintiff said, That saving to him his Course at another Time that Ne Disturba pas; Wherefore Hull awarded for the Defendant a Writ to the Bishop, and a Writ of Enquiry of Damages against the Plaintiff; for it does not lie in the Mouth of the Plaintiff to plead this Plea. Br. Brief de Enquire &c. pl. 12. cites 5 H. 5. 10.

And where Judgment is given, and Quod Cesset Executio, yet he shall make

11. In Quare Impedit, if one sues Execution of the greater Damages, he shall make Mention of all the Record. Per Prior. Br. Pleadings, pl. 51. cites 30 H. 6. 5.

12. In Quare Impedit the Bishop pray'd Damages. And Per Ashton, Danby, Newton and Porting, he shall recover Damages; But by others he shall not recover Damages, unless he can have Writ to the Bishop, which he cannot have. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25.

So if I present my Son, who is admitted, and Quare Impedit is brought against me and my Son, and after Title made I die, and the Plaintiff is nonsuited, my Son shall recover Damages

13. If I present, and my Clerk is inducted, and J. N. brings Quare Impedit against me for this and after is nonsuited, I shall have Damages, and yet cannot have Writ to the Bishop. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25. Per Ashton.

ages, and cannot have Writ to the Bishop. Ibid. — And Per Danby, If the Defendant sues himself in a Quare Impedit to hold the Church in proper Use, and the Plaintiff is nonsuited, the Defendant shall recover Damages, and cannot have Writ to the Bishop. Ibid. — So where the Defendant in Quare Impedit claims free Chapel to induce his Clerk without Presentation to the Bishop, and the Plaintiff is nonsuited, the Defendant shall recover Damages, and no Writ to the Bishop. Ibid.

14. A Man shall recover Damages in Quare Impedit where he was As where I never disturb'd. Per Newton. Br. Quare Impedit, pl. 83. cites 22 H. 6. 25. *prestat, and my Clerk is admitted and J. N.*

admitted, and J. N. brings Quare Impedit against me, and is nonsuited after Issue, I shall recover Damages. Ibid.

15. A Man may recover Damages for two Years in Quare Impedit, Br Quare Impedit, pl. 131. cites S. C. *and yet the Church is not full by the Bishop, for it was a Chantery by Creation, and without Cure of Souls. Br. Damages, pl. 164. cites 13 E. 4. 3. C.*

16. In Quare Impedit, if the Defendant pleads, that *Ne disturba pas*, the Plaintiff shall have Writ to the Bishop immediately, and Writ of Enquiry of Damages, and Judgment thereof alter, per tot. Cur. except Brian. Br. Judgment, pl. 122. cites 13 E. 4. 7. *Br. Quare Impedit, pl. 132. cites S. C. — S. P. Br. Brief, al Eveleser,*

pl. 14. cites 21 H. 6. 45. and 22 H. 6. 28, 29.

17. In Quare Impedit against three, the Plaintiff recovered by Default against one, and Judgment was, that he have Writ to the Bishop, and Damages for half a Year, and Cesset Executio till it be try'd against the other Defendants; for otherwise this Execution against the one alone, shall abate the Writ against the others; for he cannot recover the Presentation against the others when he has the Presentation by the first Judgment; as in Trespass against two, and it is tried against the one, and he takes Execution against him, the Writ shall abate against the other. Br. Quare Impedit, pl. 137. cites 20 E. 4. 1. and 10 E. 4. 11. 13. *S. C. cited Arg. 3 Buls. 174. in Case of Grange v. Denny.*

18. Where a Man has a Quare Impedit against one, and the Defendant has a Darrein Presentment against the Plaintiff, and recovers in the Darrein Presentment, and the Plaintiff is Nonsuited in the Quare Impedit, the Defendant shall have two Writs to enquire of the Damages, but he shall not render double Damages for one Disturbance. F. N. B. 39. (D)

19. Damages for half a Year were adjudged, where it appeared that the Summons was not Deceigned within the 6 Months, and held good. D. 77. pl. 35. Mich. 6 E. 6. Henslow and Stanby v. Bishop of Sarum and Keble.

20. In Quare Impedit the Jury found the Value of the Church only. The Omission of the other three Points may be supplied by Writ of Enquiry of Damages. D. 135. Marg. pl. 12. cites 10 Rep. 118. fol. 119. *And such a Precedent is in the Book of Entries, fol. 113. Et*

quod Interim cesset Executio de Brevi Episcopo habend', and at length the Plaintiff relinquished his Damages, and had Judgment and Writ to the Bishop; Quod Nota. D. 135 pl. 12. Mich. 3 & 4 P. & M. Poyner v. Charleton and Charels. — And the reason, why such Omissions in the finding by the Jury in a Quare Impedit may be supplied by a Writ of Inquiry of Damages, is, because as to the 4 Points to be inquired, no Attaint lies of them; For as to them it is only an Inquest of Office. 10 Rep. 119. Mich. 10 Jac. per Cur. in Cheyney's Case cites 11 H. 4. 81.

21. The Patron Defendant died pending the Quare Impedit for a Presentment to a Prebend, yet the Plaintiff had Judgment to recover the Presentment and Damages to 10 l. only, and to remove the Incumbent and a Writ to the Bishop Ad Petitionem Querentis dirigend'. D. 194. pl. 33. Mich. 2 & 3 Eliz. Bishop Litchfield and Merrick's Case.

22. In Quare Impedit against the Archbishop, the Bishop of Lincoln, D. 200. fol. and one G. they all made Default at the Distress, and Judgment was given against them for the Plaintiff to have a Writ to the Bishop, and to recover Damages against all of them, because by this Default all of them are supposed to be Disturbers; but the Plaintiff was compelled to make a Default, and that *En. 8 C. a Case in which the Plaintiff was compelled to make a Default, and that*

the Church was void for 3 Years past, and remained void two Years and more, and that the Church is now full of G. of the Collation of the said Archbishop; and by the Opinion of the Court Judgment was given, that the Plaintiff recover the Presentation, and have Writ to the Bishop of Lincoln aforesaid, and Damage to the Value of the Church to half a Year &c. and that all the Defendants be in Misericordia.——Bendl. 149. pl. 207. S. C. says, The Plaintiff had Judgment to recover his Presentation and Damages for two Years, and that he was of Counsel with the Plaintiff.

But see Cro. C. 175 Earl of Pembroke v. Boslock, where Damages were mitigated on Account of the Clerk's having had Possession.

23. *Error of a Judgment in Quare Impedit*, the Judgment being for the Plaintiff, and the Value of the Church found to be 80 l. per Annum, a Writ of Error being brought of the Judgment *before the Exigi Fac.* and after the Record removed, and the Judgment being affirmed, and having depended a Year and more, the Court awarded, that the Defendant in Error should have *Damages for a Year*, during which Time the Writ of Error was depending according to the Value of the Church found by the Verdict, which was 80 l. per Annum, and they awarded him 80 l. *besides Costs*, according to the President in 6 Edw. 6. D. 77. Cro. Car. 145. Mich. 4 Car. pl. 24. Anon.

24. If upon a *Writ of Error* brought *Judgment be affirmed*, the Defendant in the Writ of Error shall have Damages; Per Whitlock J. Godb. 439. Trin. 5 Car. Earl of Pembroke v. Boslock.

S. C. Skin. 25. Mich. 33 Car. 2. C. B. says, The Question was, If the Plaintiff should have Costs? And it was ruled, That if it be a Quare Impedit by Common Law, then there shall be no Costs; but other-

25. In a Quare Impedit there was a *Demurrer and an Issue*. The Plaintiff had a *Verdict*, and the Jury who try'd the Issue found the Value of the Church, and that it is yet vacant, and taxed Damages for the half Year; and the Plaintiff had *Judgment likewise upon the Demurrer*. It was moved, that *the Church being yet vacant*, and that the Patron might have the Fruit of his Presentation, he ought not to recover Damages for the Value of the half Year; And the Prothonotaries said, that it is the constant Course, that the Plaintiff shall not recover Damages for the half Year where the Church remains void; And though the Jury tax Damages, yet in such Cases they enter a Remittitur of the Damages where the Church remains void, and so they would have done in this Case without troubling the Court, if the Parties had applied themselves to them. 3 Lev. 59. Trin. 34. Car. 2. C. B. Holt v. Holland.

wife if by Statute; And if the Church is full of the Defendant by Institution, then it is a Quare Impedit within the Statute; but if it is not, then it is at Common Law; and cites Co. Ent. 528, 529. — 3 Nelf. Abr. 35. tit. Quare Impedit (C) pl. 6. in abridging this Case of Lev. 59. says the Court was of that Opinion, viz. that the Plaintiff ought not to have Damages for the Value of half a Year. [But I do not observe any Thing in the Case to that Purpose; and I presume the Law is otherwise]

26. In Quare Impedit to present to the Vicarage of B. the Plaintiff set forth, that E. C. was seised of the Rectory of B. to which the said Vicarage belongs, and that the said E. C. presented one S. and then conveyed the Rectory to the Plaintiff F. and others Trustees, and their Heirs, to the Use of the said E. C. and her Heirs, till Marriage had between Her and C. D. and after to the Use of the Plaintiffs for 500 Years, for raising 4000 l. &c. that the Marriage was had, and so the Plaintiff's possessed &c. that the Vicarage became void by the Death of S. and so it belonged to them to present. The Bishop claimed nothing but as Ordinary. H. the Incumbent pleaded, that King James I. was seised of the said Rectory in Fee, and that it being void by the Death of L. he presented one Solbear, and so derived a Descent down to King William &c. absque hoc, that E. C. was seised in Fee; there was Judgment against the Bishop, and the Plaintiffs took Issue upon the Traverse, which was tried at the Assises at Exon, and the Plaintiffs had a Verdict; and the Jury farther found, that the Vicarage was full of the Defendant H. Ex Præ-

senta-

sentatione of the King, and that it was afterwards void on the 25th of December, 1697, by the Death of Sainthill the last Incumbent, and that 20 May, 10 W. 3. the Plaintiffs brought a Quare Impedit against the Bishop and the Defendant, and that the Vicarage was of the yearly Value of 60 l. Ultra Reprizas, and thereupon the Plaintiffs prayed Judgment according to the Statute, and a Writ to the Bishop to remove the Defendant H. and to admit Idoneam Personam at the Presentation of the Plaintiffs, and Damages to the Value of the Vicarage of the Church for half a Year, and had Judgment accordingly; and a Writ of Error was brought, and the Plaintiff in Error was nonsuited. Lutw. 901. Hill. 10 & 11 W. 3. Bishop of Exeter and Heskett v. Freake & al.

(B. d. 22) Error. And Judgment reversed.

See (B. d. 19)
pl 4.

1. *A.* Seised of the Manor and Advowson Appendant had Issue B. and died seised, and B. entered and endowed M. his Mother of the 3d. Part of the Manor, and the 3d. Part of the Advowson to present by Turn, and took S. to Wife, and demised two Parts of the Manor, and the Reversion of the 3d. Part with his Part of the Advowson in Demesne and in Reversion, and retook to him and his Feme for their Lives, and presented twice to the Advowson, and after granted two Acres of the Manor with the Advowson, to W. who presented, and then W. released to the Heirs of B. and to S. his Feme, all his Right. B. died. M. died, and the Church became void. S. to whom the Estate was made for Life, ut supra, presented, and T. the Son of W. the Discontinuee, disturbed, and he brought Assise of Darrein Presentment against S. and recovered, and S. brought Writ of Error; and because the two Parts of the Advowson which remained Appendant may lie in Discontinuance by Demise of two Acres with the Advowson, yet the 3d. Part of the Advowson which the Tenant in Dower had, which remained in Reversion and lies in Grant, this does not lie in Discontinuance, and therefore the Grant of B. was not good of this but during his Life, and therefore, because the Baron had two Presentments, this 3d. Presentment belonged to M. if she had been alive, and now by her Death it belongs to S. to whom it was re-granted for Life, and therefore the Judgment erroneous which was given against S. For by the Death of B. her Baron, his Grant was void; wherefore it was awarded, that the first Judgment be reversed, and that S. have a Writ to the Bishop, and that the re-have her Damages lost by the first Judgment; and of the Damages after the first Judgment the Court took Advise; and there it was agreed, that though a Man be nonsuited in Writ of Error, he may have another Writ of Error. Br. Error, pl. 121. cites 23 Aff. 8.

Br. Present-
tation, pl. 38.
cites S. C.

2. In Quare Impedit, the Defendant appeared by Attorney who had no Warrant, and Writ was awarded to the Bishop for the Defendant, because the Plaintiff was demanded and did not come; and because it was perceived afterwards that the Defendant's Attorney had no Warrant, the Judgment and Execution were repealed, and Writ of Repeal awarded to the Bishop, and the Defendant's Attorney committed to Prison till they should consider further what to do with him. Br. Imprisonment, pl. 16. cites 38 E. 3. 8.

3. Error; the Provost of C. brought Qua. Imp. against J. H. and counted, that the Advowson was Appendant to his Manor of D. and shewed a Presentation in himself, by which his Clerk was instituted and inducted &c. J. H. said, that one J. was Master of the Hospital of G. and was seised of the Advowson as in Gross in Right of the House, and presented one P. who was instituted &c. and the Master died, and M. was made Master, which M. and his Confreres presented the said J. H. now Defendant; and

the Plaintiff said, that the said J. Master, and the said J. H. Defendant, are one and the same Person, and not diversie; upon which they demurred, and the Provost Plaintiff had Judgment to recover in C. B. And the Defendant brought Writ of Error, and assigned, because he brought *Quare Impedit* where he is out of Possession, and therefore ought to have Writ of Right of Advowson; and he said further, that no Patron is named in the Writ; and also, that by the Averment that the said J. H. and J. the Master are one and the same Person, and that the Master and Confreres presented the Master, he has by this confessed no Patron to be named &c. Br. Error, pl. 83. cites 14 H. 8. 2.

4. The Plaintiffs had a Verdict in a Quare Impedit against the Ordinary and the Incumbent, and a Writ awarded to the Metropolitan, and a Fieri Facias to the Sheriff. Writ of Error was brought; and one of the Errors assigned was, that *Damages were given for Half a Year*, when it appears that the Nonsummons was not deraign'd within the six Months; but the first Judgment was affirm'd. D. 78. b. pl. 34. Mich. 6 E. 6. Hentlow and Stansby v. Bishop of Sarum, and Keble.

The Verdict in this Case Ex Officio found, that the Incumbent was in by the Presentation of B. who is not a Party to the Writ; this was assigned for Error. Non allocatur; for this finding is only Ex Officio, and the

5. A. recovers in a Quare Impedit against the Bishop and Incumbent by Verdict, and has Judgment before the Judges of Assise, and Nisi Prius by the Statute of West. 2. 20. A. has a Writ to the Metropolitan, Quia Episcopus est pars, the Church is in the Diocese of the Bishop Defendant; the Bishop and Incumbent bring a Writ of Error directed to the Ch. J. of C. B. to reverse the Judgment given there, whereas it was not given there; yet the Writ was good, for there is no other Form, and the Original was returnable in C. B. and the Count, Plea and Issue, and Venire facias for the Trial, are there. And this is not like a Judgment in an Assise, and a Writ of Error brought upon it; for there the Original, and Process and Verdict, are all before the Justices of Assise. And in such Case a special Writ of Error is framed, and this Judgment in Assise can only be reversed in the King's Bench; and so it is of a Judgment given by Justices of Nisi Prius. Jenk. 206. pl. 36.

Incumbent by not pleading it, has waived it. If such Plea or Matter had been pleaded, it would not have abated the Writ, but it would have made the Writ abateable, and such Matter is not assignable for Error. Jenk. 206. pl. 36.

Cro. E. 65. pl. 11. S. C. by Name of Bishop of Gloucester and Savacre's Case, and awarded that the Writ was well brought; for Wray said that the Bishop hath Loss, for by this Judgment the Writ shall be

6. In a Quare Impedit by the Queen against the Bishop of Gloucester &c. and one S. the Bishop pleaded that he claimed nothing but as Ordinary; and the Queen recover'd; afterwards the Bishop and S. joined in a Writ of Error. It was intitled that they ought not to join in this Writ, because the Bishop had disclaimed the Patronage; and the Conclusion of the Writ was, *Ad grave damnum Episcopi*, which cannot be; for the Bishop cannot be grieved by the Judgment, when he neither had or claimed any Thing in the Church. Wray said that it had better been left out, but that the Bishop shall join for Conformity and for Privy of Record; and the Plea of the Bishop is not so strong as a Disclaimer; for in Disclaimer the Judgment is, 'That the Plaintiff take nothing by the Writ, whereas here it is *Quod querens recuperet Præsentationem suam versus dictum Episcopum ad Ecclesiam prædictam*. And afterwards the Writ of Error was awarded good. 3 Le. 176. pl. 228. Trin. 29 Eliz. The Queen v. The Bishop of Gloucester.

to the Archbishop for Admission and Institution, and so he has Loss, and therefore may join.—Cro. J. 94. in Case of Lancaster and Lowe, was cited the Case of Jones v. Dixon, where Jones and the Archbishop of York sued a Writ of Error of a Judgment against them, and Jones only assign'd the Errors, and therefore held to be ill.—If the Bishop and Defendant join in bringing a Writ of Error, the Bishop, unless summon'd and sever'd, must join in the assigning them. Cro. J. 92. Lancaster v. Lowe. If a Quare Impedit be brought against a Bishop and others, and Judgment be against them all, the Defendants must all join in a Writ of Error, unless where the Bishop claims only as Ordinary. 3 Mod. 134. in Case of Hacket v. Herne.

Noy 66. S. C. but not S. P.

7. The Queen had Judgment in Quare Impedit, by Reason of Lapse; Error was brought, but the Incumbent was summon'd and sever'd; and after Judgment

Judgment was revers'd at the Suit of the Heir and Executor, (being the same Person) and as Heir and Executor. It was said that the Incumbent might well enter, for by the Reversal there is no Record of the Recovery against him. Cro. E. 324. Pasch. 36 Eliz. Pipe &c. v. the Queen.

8. In Error to reverse a Judgment in a Quare Impedit it was assign'd. 1st. That a Stranger was possess'd for Years, and devised it to the Plaintiff, and that he had it by the Assent of the Executor, but did not say *Virtute Legationis præd.* 2dly. He shewes not how the Church became void, either by the Death or Deprivation of the Incumbent, nor for what Cause; and it might be such a Cause for which the Queen should have the Presentation as for Simony &c. 3dly. Because the Value of the Church is found to be 40 l. per Annum, And the Judgment is, *Quod recuperet Damnum, viz. Medietatem dicti Valoris dictæ Ecclesiæ per Dimidium unius Anni, quæ se attingunt ad 20 l.* which is not according to the Precedents. But the Court being full, the Judgment was affirm'd. Cro. E. 678. Trin. 41 Eliz. B. R. Bishop of Gloucester v. Veale.

9. Judgment was given against Dr. Harris in a Quare Impedit in C. B. ^{2 Bull. 36.} who brought a Writ of Error in B. R. and the Error assigned was, for ^{S. C. and 38.} that Austen the Defendant in the original Action had pleaded in Bar, that ^{S. P.} one Peaking was Incumbent, and that the Church became void by his Deprivation (but no Time shewen when he was deprived) and that Queen Mary presented one Wood *Usurpando* on the rightful Patron, who was in for six Months &c. The Plaintiff replied, That after Wood was presented by the Queen, the Earl of Pembroke, who had purchased the Advowson before, brought a Quare Impedit against the Ordinary and the Incumbent; to which the Ordinary pleaded, That he claim'd nothing but as Ordinary, and the Defendant's Attorney pleaded *Non sum Informatus*, by which he recover'd, and the Incumbent *Legitimo modo amotus* suit, and it doth not appear whether this Quare Impedit was brought within 6 Months after Wood was presented: It was insisted that this Plea should be taken strongest against the Pleader, and therefore the Quare Impedit shall be intended to be brought within 6 Months; for otherwise the Incumbent could not be *Legitimo modo amotus*: And the Judges being of this Opinion, the Judgment was affirmed. 1 Roll. Rep. 210. Trin. 13 Jac. B. R. Harris v. Austen.

13. Judgment was in Quare Impedit, and the same Term a Writ of Error was delivered to the same Court, before a Writ to the Bishop was awarded to admit the Clerk. Per tot. Cur. The Writ of Error ought to have been allowed without any other Superfedeas, because a Writ of Error is a *Superfedeas* in itself. Godb. 439. Trin. 5 Car. Earl of Pembroke v. Bottock.

11. In Error brought upon a Judgment in Quare Impedit given in Ireland, it was insisted that the Plaintiff must set forth both *Seisin* and *Vacancy*, but that here he had fail'd in both. For 1st. As to the Seisin the Declaration stands thus, *Seisitus fuit & in advocacione Ecclesiæ*; here the (*Et*) couples nothing, and *Seisitus* refers to nothing. 2dly. Vacancy; the Record is thus, *Ecclesia prædict. vacavit per cessionem* &c. Now this is pleading a Consequence without setting forth the Act, of which this is a Consequence; it ought to have been pleaded thus, that the Parson was made a Bishop, or advanced to a Living incompatible &c. as the Fact was, *Per quod Ecclesia præd. vacavit.* Third Exception taken to the Record was, That the Conclusion was, *Et hoc paratus est verificare*, instead of *Inde producit sectam*, and so no Suit before the Court, and that this is not meer Matter of Form. But it was answered that the Word (*Et*) may be left out or transposed thus, *Et de Feodo & de Jure*. And as to the Vacancy and the Paratus Verificare, Advantage might possibly have been taken of them by Demurrer, which Advantage is lost by taking Issue. Per Cur. The Objection of the Seisin is the strongest, for it is *Non sene* at present, and every Thing may be cured by Leaving out and putting

putting in. Possibly in Transcribing the Record (*de*) was omitted; and if the Fact be so, it may be set right by a Certiorari; *De & in advocacione* would be well. As to the Omision of the *Inde producti sectam*, this would have excused the Defendant in not answering; but in Fact he has answered it. And as to the Objection about pleading the Vacancy, it ought to have been pleaded as above objected that it ought to be, but *the Vacancy is admitted by pleading a Presentment under it*. Adjornatur. 10 Mod. 308 &c. Pasch. 1 Geo. B. R. The King v. the Bishop of Meath.

See (C. c. 2) 127. 396 the Note in the Middle and the Sections following.

(B. d. 23) *Scire facias* in Quare Impedit, and Pleadings therein.

1. **I**N Quare Impedit by the King against the Patron he recovered, and after confirmed the Estate of the Incumbent of the Defendant, and then the King had *Scire facias* upon this Judgment against the Patron; He can't plead this Confirmation made to the Incumbent, for the Incumbent had nothing in the Patronage. Br. Barre, pl. 96. cites 9 E. 3.

2 Where the King seises the Temporalities of a Bishop by Judgment; and a *Prebend annex'd voids*, the King shall have *Scire facias* of the Presentation, and shall have Execution; quod nota. Br. Quare Impedit, pl. 71. cites 21 E. 3. 29.

F. N. B. 47. (I.) the Note in the Marg. cites 21 H. 7. 3.

3. A Man had Proximam Præsentationem by Grant; the Church voided; a Stranger presented, and the Grantee brought Quare Impedit, and recovered, and had Writ to the Bishop, who returned that the Presence of the Disturber resign'd, and another is in; and upon this the Plaintiff had *Scire facias* to have Execution, notwithstanding that it be a second Avoidance now, because he recovered the first Avoidance, and the Covin of the Defendant shall not prejudice the Plaintiff. Br. Presentation, pl. 33. cites 21 H. 7. 8.

4. Where Partition is made betwixt Coparceners, by Licence of the King, of an Advowson in a Court of Record, as in the Common Pleas, and afterwards the Coparcener who hath the next Turn duth, her Heir within Age, and in Ward to the King, and the Church voids, the King shall have a *Scire facias* against the other Coparcener &c. upon that Partition; and yet he was a Stranger to the Partition. F. N. B. 34. (H.)

Ibid. in the new Notes (a) says see 12 E. 3. 9. 13 H. 8. 14. 22 E. 4. 9. 27 H. 8. 11.

5. If 2 Coparceners make Partition to present by Turns, although that one of the Coparceners afterwards usurps upon the other Coparcener, and presents in her Turn, that Presentment shall not put her out of Possession, but she shall have her Turn when it falls again, and shall have a Quare Impedit or a *Scire facias* upon the Composition, if it be upon Record, if she be disturbed to present &c. F. N. B. 34. (I.)

F. N. B. 33. (I) in the new Notes there (d) cites 14 E. 2. Quare Impedit 171. 172. That a

6. Where a Man doth recover in a Writ of Right of Advowson, he shall present at the next Avoidance, and shall have a Quare Impedit, without alleging any Presentment to himself or his Ancestors, but shall declare upon the Record, or may have a *Scire facias* upon the Recovery, and so may his Heir have a *Scire facias* upon that Recovery, against the Heir of the other Party, at the next Avoidance after the Recovery, but not after, as it seemeth. F. N. B. 36. (A.)

Man may have a *Scire facias* on the Judgment for the Disturbance, but that on the Judgment in a Writ of Right, he had Seisin delivered by the Sheriff; and yet because he cannot have Seisin of the Church without a Presentment, when the Church avoids he shall have a *Scire facias* for the Presentment. 15 E. 2. Quare Impedit 1-2 ——— F. N. B. 36 (A) in the new Notes there (b) cites 13 E. 3. *Scire facias* 118. where the Conuisee of a Fine of an Advowson brought a *Scire facias* at the next Avoidance against the Heir of the Conuisor, and held good without shewing any Presentment.

7. [So] if a Man recover in Quare Impedit, he shall have a Scire facies *Ibid* in the new Notes (c) says, He shall have a Scire facies against the Patron and the Incumbent who made Default, if he will sue Execution of this Recovery. F. N. B. 36. (B.)

Scire facies against the Heir at the next Avoidance. 39 E. 3. 25. But the Heir shall not have a Scire facies on a Recovery in a Quare Impedit. 9 H. 6. 57. because in the Quare Impedit the Presentment only is recoverable, and not the Advowson.

8. If Coparceners make Partition in the Chancery, or in C. B. to present by Turns, and afterwards a Stranger usurps in their several Turns; yet after, when their Turns come, every of them may have a Scire facies upon this Partition against the Stranger, when his Turn cometh, to shew wherefore he should not present, notwithstanding the Usurpation aforesaid. But otherwise it seemeth it is if the Partition be of Record, then they shall be put to their Writ of Right by Reason of the Usurpation. F. N. B. 36. (c) *Ibid* in the new Notes (d) says, Yet see the contrary, 33 E. 3. Quare Impedit 196. which seems not to be

Law; for there it was brought against an Estranger, and held, That tho' by such Usurpation he put the one Coparcener (whose Turn it was) out of Possession, yet it did not put the other out of Possession. 45 E. 3. 15. 22 E. 4. 9.

(C. d) *Affise of Darrein Presentment. Who shall have it without any Presentment before.* See (N. c) Sec.

1. **I**F a Tenant by Service of Chivalry presents and dies, his Heir in Ward, during which Wardship the Church voids, the Guardian in Chivalry may well maintain this Writ of Darrein Presentment if he be disturbed, tho' he himself never presented before. 32 E. 1. 89. Admitted. Contra 50 E. 3. 14. Per Holt.

2. The same Law of the Grantee of the Ward, for he may maintain this Writ. 32 E. 1. 89. Admitted.

3. 13 E. 1. cap. 5. Enacts, That as often as any, having no Right, doth present during the Time that Heirs are in Ward, or during the Estates of Tenants in Dower, by the Courtesy, or otherwise for Term of Life, or * of Years, or † in Tail, ‡ at the next Avoidance, when the Heir is come to full Age, or when, after the Death of the Tenants before named, the Advowson shall revert unto the Heir, being of full Age, he shall have such Action || by Writ of Advowson Possessory, ** as the last Ancestor of such an Heir should have had the last Avoidance happening in his Time, being of full Age before his Death, or before the Demise was made for Term of Life, or in Fee Tail as before is said. ** Tenant for Term of Half a Year or a Year, and Grantee of the next Avoidance, are within the Purview and Meaning of this Act; Tenant by Statute Merchant, or Staple, or Elegit, are within the Purview of this Statute.* 2 Inst. 359.

† Tenant in Tail was of a Manor, whereunto an Advowson was appendant, and before this Statute an Estranger usurped, and then the Stat. of Denis Condit' and this Act was made Tenant in Tail dies, and the Manor descends to his Issue; yet the Heir in Tail hath no Remedy, because the Advowson was severed by the Usurpation; and this Act extendeth not to Usurpations before this Act. 2 Inst. 359.

But if Tenant in Tail suffer an Usurpation after this Act, and dieth, his Issue shall have Remedy by Quare Impedit within the Purview of this Statute. 2 Inst. 359.

‡ Note, Albeit the Heir hath the Advowson by Descent, yet if he suffereth an Usurpation he hath no Remedy by this Branch until after he cometh of full Age; this is to be intended when the Heir is in Ward, for so this Act putteth the Case; but if the Heir be out of Ward, he may have his Quare Impedit or his Affise of Darrein Presentment during his Minority. 2 Inst. 359.

|| This is by a Quare Impedit or Affise of Darrein Presentment. 2 Inst. 359.

** Then put Case, That one purchaseth an Advowson in Fee, and dieth before any Presentation made by him, and this descends to his Heir within Age, the Church becomes void; if the Heir be in Ward the Heir may have his Quare Impedit at his full Age; and if he be within Age, and out of Ward, he may have his Quare Impedit, and count of a Presentation made by him of whom the Purchase was made; but he can have no Writ of Right of Advowson, because neither his Ancestor nor he never presented. 2 Inst. 359.

Note, It is not said here Qualem habuit, but Qualem haberet, as the Ancestor should have had it the Church had become void in his Time, and his Title to present had accrued unto him; for there the Right, or at least the Possibility of Action doth descend. 2 Inst. 359.

One seized of an Advowson in Fee, presents to the Church being void, and grants the same to A. for Life, and after grants the Reversion to K. and his Heirs; A. Tenant for Life suffereth an Usurpation to the Church, the Heir of K. having the Right of this Advowson by Descent, shall, after the Death of A. the Church becoming void, present, and yet K. could not have had a Quare Impedit; but if A. had died before the Usurpation, then might K. have had a Quare Impedit, and therefore his Heir shall have at

the next Avoidance that Remedy which by the Possibility he might have had ; And herewith agreeth the Authority of the Book of 2 E. 3. 10, 11. For there Tond taketh this Exception, but doth not demur. 2 Inst. 359, 360. — See (C. c. 2)

4. A Man shall have Assise of Darrein Presentment, *tho' he nor his Ancestors did present to the last Avoidance; As if the Tenant for Life, or for Years, or in Dower, or by the Curtesy, suffers an Usurpation unto a Church &c. and dies, he in the Reversion, who is Heir unto the Ancestor who last presented, shall have an Assise of Darrein Presentment, if he be disturbed.* F. N. B. 31 (G)

*F.N.B. 31.

(G) in the new Notes there (c)

cites 2 E. 3.

11. That the

Heir of the

Grantee of a

Reversion

shall avoid

this for a Purprise

of Lincoln,

26, 27.

And so is 33

H. 6. 12.

5. But if a Man presents, and then * grants the Advowson unto another for Life, and he suffers one Usurpation, or 2 or 3 Usurpations, now at the next Avoidance he in the Reversion shall not have an Assise of Darrein Presentment, if he be disturbed to present ; And that appeareth by the Statute of Westminster 2. cap. 5. That the Remedy of the Statute is given for the Heir of him who made the Demise, who is in Reversion, and not for the Lessor himself. F. N. B. 31. (G) cites 18 E. 2. pl. 20. 6 E. 3. 4.

this for a Purprise on the Tenant for Life ; In a Quare Impedit brought by Stanhope against the Bishop of Lincoln, this was denied by all but one. But see the contrary held by Moyle and Priort, 34 H. 6.

6. If the Assise finds that Tenant by the Curtesy, or Tenant in Dower was the last who presented, by that the Heir shall have a Writ to the Bishop, and yet he cannot make Title by that Presentment. Contra, in a Quare Impedit. And Seton gives the Reason, because he cannot convey by them ; But if the Heir do allege the last Presentment in herself, and the Assise be to her by Default, and found ut Supra, yet the Heir shall recover. Contra, If they be at Issue upon that Presentment. F. N. B. 31. (G) The Note in the Margin.

But if the Infant purchase the Advowson and present, and afterwards the Church becomes void,

and a Stranger presents and usurps upon the Infant, and then the Incumbent dies, the Infant presents, and is disturbed by a Stranger, he shall not have a Darrein Presentment, but shall be put to his Writ of Right. F. N. B. 31. (K) [according to the new Edition, but in the old Editions it is (I) S. 4.]

(I) S. 4.]

7. If a Man usurps upon an Infant, and presents which Infant hath the Advowson by Descent ; and afterwards the Incumbent dies, the Infant shall present ; and if he be disturbed, he shall have an Assise of Darrein Presentment. F. N. B. 31. (K) [according to the new Edition, but in the old Editions it is (I) S. 4.]

and a Stranger presents and usurps upon the Infant, and then the Incumbent dies, the Infant presents, and is disturbed by a Stranger, he shall not have a Darrein Presentment, but shall be put to his Writ of Right. F. N. B. 31. (K) [according to the new Edition, but in the old Editions it is (I) S. 4.]

(D. d) Who shall have it after Presentation.

1. If a Guardian in Chivalry presents, and after the Church voids, he shall have an Assise of Darrein Presentment if he be disturbed. Fitz. Ra. 31. I. Contra 50 E. 3. 14. Per Holt.

Watf. Comp.

Inc. Svo.

432. cap. 22.

cites S. C.

See (H. d)

pl. 3. and the

Notes there.

2. So a Lessee for Years shall have this Writ if he has presented before. Fitz. Ra. 31. I. 5 H. 7. 16. b. Per Fairfax. Contra 50 E. 3. 14. Per Holt. Kell. Incerti Temporis 118. b.

Watf. Comp.

Inc. Svo.

432. cap. 22.

cites S. C.

This is the

Case of the

Rectory of

West Eod-

3. So a Tenant at Will, after he has once presented, shall have this Writ. Contra 50 E. 3. 14. Per Holt.

4. If the King's Patentee of an Advowson presents twice to the same Advowson, and his Clerk is instituted and inducted, tho' the Patent is void in Law, so that the Advowson does not pass thereby, yet the Patentee has

to

so gain'd the Advowson by Usurpation against all Strangers, That if he be win in Wilt-
 disturb'd at the next Avoidance, he may maintain an Assise of Darrein D.
 Presentment against a Stranger that has no Title to it. Watf. Comp. Inc. 350. b. pl. 21.
 8vo. 222. cap. 13. cites Dyer 351. 18 Eliz. — Bendl 252
 pl. 270. S. C.

(E. d) Assise of Darrein Presentment. [In what Cases
 it lies. Estate altered.]

Fol 381.

1. **H**E who will have this Writ ought to have the same Estate, or Watf. Comp.
 Parcel of the same Estate which he had at the Time of the first Inc. 8vo 422.
 Presentment. cap. 22. cites
 S. C.

2. If a Man being Tenant Pur autre vie of an Advowson presents, Watf. Comp.
 and after his Estate is enlarged for his own Life; and after the Church Inc. 8vo 433.
 voids again, he shall not maintain an Assise of Darrein Presentment cap. 22. cites
 upon the said Presentment, because it is not the same Estate nor any S. C. — This
 Parcel of the Estate upon which the first Presentment was, out a was in Case
 new Estate. Kell. Incerti temporis 118. b. of a Tenant
 by the Court
 who presented

in the Life of his Wife, who was seised in fee. Keilw. 118. b. — See pl. 13.

3. So it is if Lessee for Years of an Advowson presents, and after Watf. Comp.
 his Estate is enlarged for Life or in Fee, and then the Church voids, Inc. 8vo 433.
 he shall not have Assise of Darrein Presentment, because he has a new cap. 22. cites
 Estate by Enlargement. S. C. — S. P.
 F. N. B. 31.
 (H) in the

new Notes (b) accordingly.

4. The same Law if Lessee at Will presents, and after his Estate Watf. Comp.
 is enlarged for Life or Years, and this is more wrong; For he Inc. 8vo.
 could not have this Writ upon the first Estate. 433. cap. 22.
 cites S. C.

5. If Lessee for Life of an Advowson upon Condition to have Fee Watf. Comp.
 presents, and after the Fee accrues, and then the Church voids, it Inc. 8vo.
 seems that he shall have this Writ, because Parcel of the old 433. cap. 22.
 Estate continues, and he had the Possibility of Accruer at the time cites S. C.
 of the first Presentment.

6. If Lessee for Years of an Advowson presents, and after the Term Watf. Comp.
 incurs, and he takes a new Lease for Years of the Advowson, it Inc. 8vo.
 seems clearly that he shall not have this Writ, because he is in of 433. cap. 22.
 other Estate than that upon which the first Presentment was made. cites S. C.

7. If the Grantee of a next Avoidance presents, and after purchases Watf. Comp.
 the Advowson, and after the Church voids, he shall not have this Inc. 8vo.
 Writ, because this is merely a new Estate, and no Parcel of the Es- 433. cap. 22.
 tate upon which the first Presentment was. cites S. C.

8. So if Lessee for Years, or Pur autre vie presents, and after Watf. Comp.
 purchases the Reversion, and then the Years expire, or Cesty que Vie Inc. 8vo.
 dies, and afterwards the Church voids, he shall not have this Writ, 433. cap. 22.
 because he is in of other Estate. cites S. C.

9. So shall it be, though the Church voids during the Years, or du- Watf. Comp.
 ring the Life of Cesty que Vie; For the first Estate is extinct by his Inc. 8vo.
 own Act, and therefore he shall not have any Benefit of the first Es- 433. cap. 22.
 tate. cites S. C.

10. If two Jointenants for Years, Life, or in Fee present, and Watf. Comp.
 then one dies, and after the Church voids, the Survivor shall have Inc. 8vo.
 this Writ, because he has the same Estate which he had upon the 433. cap. 22.
 first Presentment. cites S. C.

Watf. Comp.
Inc. Svo.
435. cap. 22.
cites S. C.

11. If Tenant in Fee or in Tail of an Advowson upon Condition to have for Life or Years presents, and after his Estate decreases, he shall have this Writ when the Church voids again, because he has Parcel of the old Estate.

Watf. Comp.
Inc. Svo.
435. cap. 22.
cites S. C.

12. So if Tenant in Tail presents, and after becomes Tenant after Possibility, and after the Church voids, he shall have this Writ, because this is a Remainder of the Tail.

Watf. Comp.
Inc. Svo.
434. cap. 22.
cites S. C.

13. If the Baron seised in Right of his Feme of an Advowson presents, and after has Issue, and Feme dies, and after the Church voids, the Baron shall not have this Writ, because he is in of other Estate than that upon which he presented before; for before he had not any Estate, but was only seised in Right of the Feme, and now he is seised of an Estate for Life. Dubitatur. Kell. incerti temporis. 118. b.

F. N. B.
21. (G) in
the new
Notes there

b cites Kitchin [but it seems it should be Kelw.] 118 that in this Case the Husband shall have Affise &c. [But the Case seems to be only the Arguments on either Side]

* Fo 382.

Watf. Comp.
Inc. Svo.
434. cap. 22.
cites same
Cases

14. But if the Baron after Issue had, had presented, and after the Feme dies, and afterwards the Church voids, the Baron shall have this Writ, because he had an * Inception of an Estate for Life by the Curtesy at the first Presentment, the which is now compleated.

15. If a Feme be Lessee for Life, the Remainder for Life to the Baron, of an Advowson, and the Baron presents, and after the Feme dies, it seems that the Baron shall not have Writ when the Church voids again; because before, he presented in the Right of the Feme by reason of her Estate for Life, and now he is seised of another Estate.

16. If the Husband and Wife present to an Advowson in the Right of the Wife, which is appendant to the Manor of the Wife's, and after the Husband aliens one Acre, Parcel of the Manor, with the Advowson in Fee to a Stranger, and dies, and the Stranger presents, and aliens the Acre to another in Fee, saving the Advowson to himself, and then the Church voids, the Wife shall present; and if she be disturbed, she shall have an Affise of Darrein Presentment; because the Advowson was severed from the Acre; but if the Advowson were appendant to the Acre, then the Wife ought to recover the Acre before she present to the Advowson. F. N. B. 31. (K) S. 2. [according to the new Edition, but in the old Editions it is (I) S. 5.]

Watf. Comp.
Inc. Svo.
431. cap. 22.
S. P.

17. Wherever a Man may have Affise of Darrein Presentment, he may have a Quare Impedit, but not e contra. Godolph. Rep. 643. cap. 44. S. 1. cites Terms of Law, Verb. Quare Impedit.

See (K d)—
(O d)

(F. d) What shall be good Presentment to maintain it,

Watf. Comp.
Inc. Svo.
431. cap. 22.
cites S. C.

1. IF J. S. presents in my Name, and by my Assent, and after the Church voids, this is a sufficient Presentment for me to have an Affise of Darrein Presentment against J. S. for this was my Presentment. Tr. 5 E. 1. b. Rot. 25. adjudged,

2. Where the King or the Pope presents to my Advowson without Title, I shall have Affise of Darrein Presentment. Br. Darrein Presentment, pl. 4. cites 3 H. 7. 7.

So if a Man
presents unto
an Advow-
son, and af-
terwards the
Incumbent
dies, and an-
other Or-

3. If a Man presents unto an Advowson unto which he hath Right, and afterwards the Incumbent dies, and a Stranger usurps, and presents unto this Advowson in the Time of War, and after that Incumbent dies; Now, if he who hath Right presents again, and be disturbed, he shall have an Affise of Darrein Presentment, and this Presentment made in Time of War by the Stranger, shall not grieve him. F. N. B. 31. (I)

diary presents by Lapse another Incumbent, and after that *Incumbent dies* ; Now the Right Patron shall present, and if he be disturbed, he shall have an Affise of Darrein Presentment, notwithstanding the mean Presentments. F. N. B. 31 (I)—— But if a Man presents unto an Advowson, and after *he dies*, the same for Term of Years, and after the Church is void, and the Tenant for Years presents &c, and then the Incumbent dies, and the Lessor presents, and is disturbed, it seemeth that he shall not have an Affise of Darrein Presentment, because the Tenant for Years did present in his own Right. F. N. B. 31 (I)

(G. d) *In what Cases the Presentment. Of one shall be of others.* See (E. d)

1. **A** Presentment by the Grandfather is sufficient for the Son to maintain this Writ without any Presentment by himself, this being the last Presentment. Tr. 5. E. 1. h. Rot. 25. Watf Comp. Inc. Svo. 4. l. cap. 22. cites S. C.
 2. If a Tenant by Service of Chivalry presents and dies, his Heir in Ward, during which Wardship the Church voids, the Guardian in Chivalry may well maintain this Writ if he be disturbed, tho' he himself never presented before. 32 E. 1. 89. Admitted.
 3. The same Law of the Grantee of the Ward; For he may maintain this Writ. 32 E. 1. 89. Admitted.
 4. An Heir who comes in by Descent shall maintain this Affise upon a Presentment made by any Ancestor. Britton. fol. 242. b. Watf Comp. Inc. Svo. 432. cap. 22.
- cites S. C. — If the Guardian presents in the Right of the Heir, and the Incumbent dies, the Heir shall present; and if he be disturbed, he shall have an Affise of Darrein Presentment, although the Guardian did present the mean and the last Presentment. F. N. B. (J)

(H. d) *Affise of Darrein Presentment. What Person shall have it.* See (E. d)

1. **T**enant in Fee of an Advowson may have this Writ without Doubt. Watf Comp. Inc. Svo. 431. cap. 22. cites S. C.
 2. Tenant in Taile of an Advowson may have this Writ as well as Tenant in Fee thereof, and is not necessarily put to his Quare Impedit. * 46 Aff. 4. Adjudged. * Br. Taile. pl. 24. cites S. C. —
- Affise of Darrein Presentment was brought by the Heir in Tail, who claimed it as appendant to a House. Chelre said, he claims in Tail, therefore he ought to have Quare Impedit, and not this Action. But per Finch he may have the one or the other, therefore Answer, Quare Impedit; And yet the Heir in Tail shall not have Affise of Mortdancestor, but Formedon, as appears in Formedon in F. N. B. and elsewhere. Br. Darrein Presentment, pl. 1. cites 46 Aff. 4.
- † Br. Quare Impedit. pl. 148. cites S. C.

3. Lessee for Years shall have this Writ, if he has presented before, tho' he has not a Franktenement; For this Affise is not like to an Affise of Novel Disseisin. Fitz. Na. 31. J. Contra Reg. incerti Temporis 118. b. See (E. d) pl. 6. S. P. For he shall not recover the Advowson
- in the Darrein Presentment, but only the Presentation, as in Quare Impedit, per Fairfax J But if any of the Affise for Termor; For it seems that none shall have Affise in the Common Law, but he who has Title of Franktenement; But by Statute Tenant by Statute Merchant & Elegit, may have Affise. Br. Darrein Presentment, pl. 2. cites 5 H 7 16.

4. Guardian in Chivalry shall have this Writ, if he has presented before. Fitz. Na. 31. J. 32 E. 1. 89.

* Upon this Branch, two Conclusions are to be observed, first, That the Heir in Reversion is provided for in this Case, and not the Lessor himself, For here it is said, Verus Heres 2dly, That albeit, Tenant by the Curtesy, Tenant in Dower, Tenant for Life, or Tenant in Tail presented last, yet the Heir to whom the Reversion falleth in Possession, shall have by this Branch an Assise of Darrein Presentment, albeit the Heir or his Ancestor did not immediately present before. 2 Inst. 362.

5. 13 E. 1. cap. 5. Enacts. That where it chanceth that after the Death of the Ancestor of him that presented his Clerk unto a Church, the same Advowson is assigned in Dower to any Woman, or to Tenant by the Curtesy, which do present, and after the Death of such Tenants the very Heir is disturbed to present when the Church is void, It is provided, That from henceforth it shall be in the Election of the Party disturbed, whether he will sue a Writ of Quare Impedit, or of Darrein Presentment; The same shall be observed in Advowsons demised for Term of Life of Years, or in Fee-Tail.

For on this Writ the Advowson shall be recovered; But in Quare Impedit nothing shall be recovered but the Presentation or Damages; and if in Quare Impedit brought by the Patron alone, a Writ should be awarded to the Bishop against him, it would not find the Feme, who is not Party. Br. Quare Impedit, pl. 41. cites 50 E. 3. 13.

6. Assise of Darrein Presentment is not maintainable by the Baron alone, In Jure Uxoris, without naming the Feme with him. Contrary of Quare Impedit. Br. Darrein Presentment, pl. 3. cites 14 H. 4. 12.

S P. Jenk 1. pl. 1. For the Presentment only is to be recovered. Understand that the King may maintain this Writ of any other Church, but not of a Prebend. Jenk. 1. pl. 1.

7. The King may maintain an Assise of Darrein Presentment. F. N. B. 31. (C)

F. N. B. 32 (A) in the Note in the Margin cites 20 E. 2. Dar. Presentment 11 & 13. but says they seem to make a Difference, when the Disturbance is before the Composition to present by Turns, and when after.

8. Assise of Darrein Presentment doth not lie for one Coparcener against the other, as appeareth M. 20. E. 3. & M. 15. E. 3. pl. 10. F. N. B. 32 (A)

* Both the Translations leave out the Word (Not) but it is in the French Original.

9. If a Parson be Patron of a Vicarage, and the Vicarage voids, and a Stranger presents, the Parson shall have a Quare Impedit, or Darrein Presentment; But if the Six Months pass, he shall * [not] have a Writ of Right of Advowson; because that Writ is given only for him who hath the intire Fee and Right in him, and the Parson hath not the same; For the Right is in the Patron and Ordinary. F. N. B. 49 (K)

(I. d) Assise of Darrein Presentment. Of what Thing.

1. **T**HIS Writ is all in the Possession, and the Presentment is the Possession. 21 E. 4. 2.

2. An Assise of Darrein Presentment does not lie De Prebendis or Ecclesiis Prebendis; ita Provisum est coram Rege, Archiepiscopis, Episcopis, Comitibus & Baronibus. Jenk. 1. pl. 1. cites 19 H. 3.

(K. d)

(K. d) *What will be sufficient Seisin to maintain it.*

Fol. 383.
See (K. d) —
(O. d)
Where the
Ordinary,
Metropoli-

1. **I**Nstitution of his Clerk without Induction is sufficient to maintain this Writ. 38 H. 6. 16. b.

ran, or King presents for *Lapse*, any of these Collations will serve the Patron for Possession in his Affise of Darrein Presentment Godolph. Rep. 643. cap. 44. S. 1.

(K. d. 2) Darrein Presentment. *Proceedings, Pleadings, and Judgment.*

1. **I**N an Affise of Darrein Presentment of an Advowson in Gross, *Joindtenancy* is not a good Plea. By the Judges of both Benches. Jenk. 13. pl. 23. cites 15 E. 3.

2. Where the King or the Pope presents to my Advowson without Title, I shall have Affise of Darrein Presentment against the Incumbent alone without naming the King or the Pope; For Process cannot be made against either of them. Br. Darrein Presentment, pl. 4. cites 3 H. 7. 7.

3. If a Man presents to an Advowson, and afterwards the Parson resigns or is deposed, and the Patron presents again, and is disturbed, he shall have an Affise of Darrein Presentment; and the Form of the Writ shall be *Quia Advocatus tempore Pacis presentavit ultimam Personam, que mortua est, ad Ecclesiam &c.* although he resign and be living. And the Form of the Writ is to suppose, that the Defendant does deforce him of the Advowson, and yet by his Count he counts, that he or his Ancestors last presented to the Advowson, by which he does suppose that he is in Possession of the Advowson; and yet the same is good. F. N. B. 31. (H)

4. If one Defendant in a Darrein Presentment dies, the Writ is good by the Survivor against the other. F. N. B. 32. (B)

5. If a Disturber present to an Advowson, and the Patron bring an Affise of Darrein Presentment, and pending the Writ, the Incumbent dies, if the Disturber presents another Incumbent and dies, yet the Patron shall have an Affise of Darrein Presentment upon the 1st. Disturbance against the Heir of the Disturber by Journey's Accounts; and so if the Disturber presents two or three times within the 6 Months. the very Patron shall have an Affise of Darrein Presentment upon the first Disturbance. F. N. B. 32. (C)

6. A Man shall not tender a * Demy-mark against the King to enquire of the Seisin alleged in the King's Count or Declaration, as he shall in Case a Common Person brings the Writ; neither shall a Man have *judgment* against the King, although it be after the Mife joined betwixt the King and the Tenant. F. N. B. 31. (D)

shall allege that he or his Progenitor was seised without shewing any time. Co. Litt. 294. 31. (D)

* S. P. because Nullum tempus occurrit Regi, and therefore the King

b.— F. N. B.

7. In Darrein Presentment it was pleaded in Abatement of the Writ, that the same Plaintiff had brought a *Quare Impedit* for the same Church against the same Defendants, which Writ was * returned, and that they did appear to defend it. The Court held the Plea good in Abatement of the Writ; For the Quare Impedit is a Writ of a higher Nature, it being for the Right and the Possession. And the Statute of W. cap. 5. says, It may be in the Election of one, whether he will have an Affise of Darrein Presentment or Quare Impedit, and therefore he cannot have them

Mo. 883. pl. 1239 S. C. Nov 18. S. C. by the Name of the VI. lage of St. Andrew. v. Archbishop of York and Courtes of Rich. Shrewsbury

—Brownl. both. And the Court awarded, that the Assise abate. Hutt. 3. 4. Mich. 27. S. C. by 15 Jac. Andrews v. Hacker.

Name of Sir William St. Andrew v. Archbishop of York and the Countess of Shrewsbury & J. H. — S. C. Hob 184 pl. 222. — G. Hist. of C. B. 207. cites S. C. — Watf. Comp. Inc. Svo. 435, 436 cites same Cases.

So where Assise of Darrein Presentment was taken by *Default against the Clerk*, and the other Tenant pleaded in *Abatement* of the Assise, that there was a *Quare Impedit* depending, the Plea was adjudg'd good. Brownl. 28. Trin. 12 Jac. Lovelace v. Lady Spencer. — * Warburton J. cited 10 E. 3. Statham in Darrein Presentment 3. that it was urg'd by Hank and Hill, that the *Quare Impedit* was not depending till Defendant had appeared. Hutt. 4. but the Book says, Vide 2 E. 4. fol. that it is depending when it is returned.

Watf. Comp. Inc. Svo. 493. cap. 26. cites S. C. — Ibid. 530. cap. 28. cites S. C. — 8. If Darrein Presentment be brought in *Middlesex*, at the Return of the Writ the *Assise* shall be there arraigned by the Serjeants at the Bar in *French*, and the Tenant shall be demanded, and if the Tenant do not appear, when he is demanded, a *Re-summons* shall be awarded; and if upon the *Re-summons* the Tenant shall not appear, the *Assise* shall be taken against him by *Default*; and if the Tenant appear, he may demand *Oyer* of the Writ and the Return, and the Writ shall be read to him in *hæc Verba*, and the Return thereof, and the *Jury* shall have the *View*, and the Tenant may take *Exception* either to the Writ or to the Return thereof, if there be Cause; and if there be no Cause, then he may pray a *Day to plead*; and if the Court give a Day, then the Jurors that appeared shall be discharged of their Attendance, and ought to appear upon a New Process to be awarded against them. The Judgment in this Assise is to recover the * *Presentation*, *Damages*, and the *Value* for half a Year, and if 6 Months be passed, the Value of the Church for 2 Years, by the Statute of Westminster the 2d. and 6 of the Jury ought to have the *View* of the Church, to the Intent that they may put the Plaintiff into Possession if he recover; and in this Writ the Plaintiff shall not recover the Advowson but the Presentation. The Process in this Writ is *Summons*, *Re-summons* against the Tenant, and *Summons*, *Habeas Corpus* and *Distress* against the Jury, and the Process shall be returned from 15 Days, to 15 Days, and no *Essoign* nor *Voucher* lies after a *Re-summons*. Brownl. 160.

* S. P. Jenk. 2 pl. 1. cites 5 H. 7. 16.

Jo. 330. Lort v. Bishop of St. Davids S. C. but not S. P.

9. The Declaration in Assise of Darrein Presentment was *Quod ipse Præsentavit*, without saying *Ad eandem Ecclesiam*. Upon Error brought it was adjudged well enough; For it cannot have any other *Intendment* than that he presented to the same Church mentioned in the Plaint; And the Words after (*Quod Admissus &c. fuit in eadem*) refer to the Church mentioned in the Plaint, and therefore it was held good enough, and so affirmed a Judgment given in the Grand Sessions in Wales. Cro. C. 341. 348. Hill. 9 Car. B. R. Cort v. Bishop of St. David's, Owen, and Pritchard.

(K. d. 3) Verdict. Good, in Darrein Presentment.

It shall be intended, that it was well brought, and that there was no Plea-party before the Writ purchased, unless it be

1. IN Darrein Presentment Verdict found the Issue for the Plaintiff, and that the Church was full of P. the Defendant, *Per tempus semestris modo Præteritum*, and shewed not When or How long it was void, so as it might appear to the Court; and it was objected, that this might be a long time before the Writ brought. But all the Court delivered their Opinions *seriatim* that the Verdict is good, and that it is not necessary to find When. But the Jury having found, *Quod tempus semestris Modo transiit*, the *Modo transiit* shall be intended that the 6 Months passed hanging the Writ, which is the only Thing inquirable in respect of the Da-

Damages. Cro. C. 341. 348. Cort v. Bishop of St. David, Owen, & pleaded. Jo. Pritchard.

330. Hill. 9
Car. B. R.

the 5th. Resolution in S. C. by the Name of Lort v. the Bishop of St. David.

(L. d) *Right of Advowson. Of what Thing.*

1. **A** Right of Advowson lies of an Appropriation. 44 E. 3. 34.
14 H. 4. 14. b. Contra Com. Grendon 501.

2. The King brought Writ of Right of Advowson of the 4th. Part In Right of
of the Church of St. Dunstan in L. The Defendant put himself in Inquest Advowson
in lieu of Grand Assise; Per Pole, upon Grand Assise Nisi Prius is not of the 4th.
grantable; Quod Nota. Br. Droit de recto, pl. 14. cites 24 E. 3. 23. Part of the
Tithes and
Offerings of
the Church of S. D. in L. Cand. demanded Judgment of the Writ; For the Statute of W. 2. gave Tithes
only. Per Thorp, the Chancery may make Writ of Tithes and Offerings In Consimili Casu, and
therefore he awarded the Writ good. Br. Droit de recto, pl. 8. cites 38 E. 3. 13; — S. P. F. N. B.
30 (G) — But one shall not have a Writ of Right of Advowson of the Tithes of a Curve of Land,
because it does not thereby appear, whether it be of the Value of the 4th Part of the Church. F. N.
B. 30. (G) in the new Notes there (a) cites 18 E. 2. Brief 825.

3. Writ of Right lies well of the * Moiety of an Advowson of a Church, S. P. Where
or of a 3d or 4th Part thereof; and yet an Advowson is entire. Br. Brief, a Man claims
to have Fee
Simple in
the Advow-
son. F. N. B. 30. (G) — * S. P. Br. Quare Impedit, pl. 10. cites 33 H. 6. 11. — Where two Ad-
vowsons in one Church are consolidated into one Church, there each shall have Writ of Right De Advocacione
Medietatis Ecclesie; for now they are two Advowsons, and yet but one Church, where they
were two before. Br. Quare Impedit, pl. 10. cites 33 H. 6. 11.

F. N. B. 31. (B) says, That in 31 E. 1. it appears, that a Man shall have a Writ of Right De Medie-
tate Advocacionis where an Advowson is partible betwixt 2 Coparceners, and one of them is disturbed by a
Stranger. — But the Writ of Right De Advocacione Medietatis Ecclesie lay where 2 Coparceners do pre-
sent 2 Parsons to one Advowson &c. as there are in some Churches 2 Parsons &c. F. N. B. 31 (B)

4. Writ of Right quod reddat Advocacionem of the Tithes of 4 Acres,
or of one Acre, and the like, was at Common Law, and therefore the
Statute was made, that Writ of Right of Tithes should not be granted
of less Part than of the 4th Part of the Tithes. And so Præcipe quod
reddat Advocacionem Decimarum quartæ Partis, tertiæ Partis &c. Per
Markham. Br. Prohibition, pl. 7. cites 38 H. 6. 19.

5. A Writ of Right of Advowson lieth de Advocacione Vicaria, vel * S. P. Jenk
* Præbende vel † Capelle, and such like, as well as De Advocacione Ec- 1. pl. 1.
clesiæ. F. N. B. 31. (C) † A Man
shall have
this Writ

of a Chapel which is a Donative, as well as he shall have if it were presentable to the Ordinary. F. N. B.
31. (E)

(L. d. 2) *Writ of Right of Advowson. By or against
whom it lies.*

1. **W**HERE a Partition is made between Parceners to present ly Turn,
they are all Tenants thereof, and Writ of Right of Advow-
son shall be brought against all. Br. Quare Impedit, pl. 73. cites 21 E.
3. 30, 31.

2. Tenant in Tail cannot have Writ of Right. Br. Quare Impedit, pl.
31. cites 43 E. 3. 24.

Br. Quare Impedit, pl. 114. cites S. C. * S. P. Br. Quare Impedit, pl. 111. cites 38 H. 6. 20. — S. P. Br. Prohibition, pl. 7. cites 38 H. 6. 19. Per Danby, Davers, and Moyle; but Yelverton Contra — S. P. Bur Brooke says, *Quare inde*; for the contrary was held in the Exchequer-Chamber by Yelverton and Fortescue, That a † Parson Imparsoned shall have Writ of Right, and shall allege Esplees specially by their Hands. Br. Droit de Recto, pl. 22. cites 39 H. 6. 20, 21. — † S. P. Br. Spoliation, pl. 4. cites 38 H. 6. 19. that he may have it as Patron. Per Yelverton.

Ibid. pl. 134. cites 16 E. 4. 11. — Br. Judgment, pl. 51. cites 39 H. 6. 23.

Put if a Man have an Advowson to him and the Heirs of his Body begotten, and for Default of such Issue &c. the Remainder to him and his Heirs in Fee Simple; if he be disturbed, he shall not have this Writ, but a Quare Impedit, because he hath not Title to the Advowson but in Tail, which is in Possession; for the Fee Simple is not properly in Possession during the Estate Tail, and he ought to maintain the Action by that Title that he claimeth the Possession of the Advowson by, and that is of an Estate in Tail. F. N. B. 30. (B)

And therefore by Thorp, If a Clerk be instituted but not inducted, he shall not have this Writ of Right of Advowson. F. N. B. 30. (B) in the new Notes there (b) cites 38 E. 3. 9. a.

6. Where one usurps upon Lessee for Years, by this the Usurper has the Fee, and against him the Writ of Right lies, and that descends to his Heirs. Hutt 66. The first Resolution in the Case of Rudd v. the Bishop of Lincoln.

(M. d) Right of Advowson. In what Cases a *Seisin* is necessary.

* S. P. Watf. Comp. Inc. 8vo. 241. cap. 13. † S. P. Jo. 49. in the Case of Dalton v. the Bishop of Ely. Watf. Comp. Inc. 8vo. 242. cap. 13. cites Same Cases.

1. **EVERY** one must * count of some Seisin. If † Purchasor suffers an Usurpation, and suffers 6 Months to pass, he is without Remedy perpetually (for he cannot count of any Seisin) Co. 10. 134. b. 43 E. 3. 15. 1 H. 4. 2. b. 43 Ass. 21. Per Thorpe.

2. If Purchasor in Tail suffers an usurpation before Presentment, he is without Remedy during his Life. 43 E. 3. 15. Adjudg'd. (and by the Common Law the Issue for ever before the Statute of W. 2)

S. P. Otherwise the Writ does not lie. F. N. B. 30. (B)

3. He ought to shew Possession in him or his Ancestors. 21 E. 4. 1 1 H. 4. 2. 21 E. 3. 27. b.

Br. Quare Impedit, pl. 40. cites S. C.

4. Where the King has Title to an Advowson by Alienation in Mortmain, he cannot have Writ of Right where Presentation is got after, because this is upon other Possession, and also he has no Right but only a Title; and therefore shall have Quare Impedit, which is in the Possession, after divers

vers Presentments within the Year; quod nota; Br. Droit de Recto, pl. 5. cites 47 E. 3. 11.

(N. d) *In whom it is to be alleged. Seisin.*

1. **I**f an Advowson be given in Frankalmoigne before Limitation to a Religious House, which is after dissolved, and after the Church voids, the Possession of the House is not sufficient for the Founder. 21 E. 4. 1, 2. b.

2. If the Lord claims to have an Advowson alien'd in Mortmain by his Tenant, a Seisin in the Tenant is not sufficient to maintain this Writ, because this is not any Seisin in him or his Ancestors. 21 E. 3. 27. b.

Watf. Comp. Inc. Svo. 242. cap. 13. cites S. C. — Ibid 212 cap. 13. cites S. C.

By whom.

3. Taking of Esplees by the Incumbent is sufficient for the Patron. 21 E. 4. 1. b.

F. N. B. 30. (B)

(O. d) Right of Advowson. *What Seisin shall be sufficient.*

See (F. d) (K. d)

1. **A**dmission and Institution of his Clerk without Induction, doth not suffice to maintain this Writ, because in this Writ he ought to allege Esplees in his Clerk, as in Perception of great Tithes, and this he cannot do without Induction; for before Induction he has no Estate in the Glebe. 38 E. 3. 9. Com. Hare and Buckley 523. Quare 38 H. 6. 17.

Watf. Comp. Inc. Svo. 241. cap. 13. cites S. C. — S. P. Br. Seisin, pl. 19 cites 38 E. 3. 4. —

S. P. Br. Droit de Recto, pl. 1. cites 26 H. 3. 3. — S. P. Br. Quare Impedit, pl. 1. cites 22 H. 6. 27. — S. P. F. N. B. 30. (B)

2. A Seisin before Time of Memory is not sufficient to maintain this Writ. 21 E. 4. 1. 2. b admitted.

Fol. 384.

3. If a Man has once presented and his Clerk inducted, if there are after diverse Usurpations, yet this Presentment is sufficient to maintain this Writ. 43 E. 3. 15.

Watf. Comp. Inc. Svo. 241. cap. 13. cites Same Cases.

(O. d 2) Right of Advowson. *Proceedings and Pleadings. And what shall abate the Writ.*

See (M. 1) pl. 1, 3.

1. **Q**UARE Impedit was awarded good, notwithstanding an Omission of a Misfe in the Conveyance; Contra in Writ of Right; and it may be that he in whom Omission is alleg'd, was never seised; and therefore the Writ awarded good. Br. Quare Impedit, pl. 32. cites 44 E. 3. 21.

2. In Writ of Right of Advowson, the Tenant shall come and make Defence, and may join the Misfe by Battel, or Grand Misfe &c. F. N. B. 30. (C)

3. If two bring Writ of Right of Advowson, or if it be brought against two, and the one dies of the one Part or the other, the Writ shall abate. Contra in a Quare Impedit; for there after Title made, the Defendant is become Actor, and he may recover Damages against the Plaintiff. Br. Quare Impedit, pl. 6. cites 9 H. 6. 30.

In this Writ the Summons shall be made on the Glebe,

and the Glebe shall be taken into the King's Hands at the Grand Cape. F. N. B. 30. (B) in the new Notes there (c) cites 11 H. 6. 3. 4.

5. In Writ of Right of Advowson, it is sufficient to plead Recovery, without alleging Presentment. Per Priot. Br. Judgment, pl. 51. cites 39 H. 6. 23.

Br. Droit de Recto, pl. 27. cites S. C. — Br. Abridgement, pl. 35. cites S. C.

6. In Right of Advowson the Tenant said that the Demandant was seised of the sixth Part of the Advowson at the Time of the Writ purchas'd. Et per tot. Cur. It shall abate the whole Writ; for the Advowson is intire, and not severable, and he cannot abridge his Demand, nor he cannot recover the entire, according to his Demand; and therefore he ought to have brought his Writ of 5 Parts. Br. Brief, pl. 316. cites 5 H. 7. 7.

* Patron by the Canon Law, as also in the Feuds, (wherewith our Common Law doth herein accord) doth signify a Person

(P. d) *Jure * Patronatus.* What. [In General.]

1. If one Man presents his Clerk to the Bishop within the 6 Months, and another also presents his Clerk; in this Case the Church is Litigious, and the Bishop may award this Writ of Jure Patronatus to inquire to whom the Right belongs.

of Right in him the free Donation or Gift of a Benefice, grounded originally upon the Bounty and Beneficence of such as Founded, Erected or Endowed Churches with a considerable Part of their Revenue. Godolph. Rep. 178. cap. 16. S. 1.

When the Ordinary inquires De Jure Patronatus, he makes Commission to his Clerk to do it. Br. Quare Impedit, pl. 12. cites 33 H. 6. 12. &c. — The Jure Patronatus is only for the Excuse of the Bishop. Br. Quare Impedit, pl. 12.

† If two Patrons, each pretending a Right or Title to the Presentation, shall present one and the same Person severally to the Bishop, to be Admitted and Instituted to the Church, the Bishop cannot admit him generally, but must in his Admittance of the Incumbent admit him Incumbent of the Presentation only of one of them; and if they make such several Presentations, claiming by several Titles, the Bishop is to direct his Writ De Jure Patronatus, for that in such Case the Church is become * Litigious, yet the Bishop is not to award the said Writ but at the Instance and Request of the said Parties. Godolph. Rep. 180. cap. 16. S. 3 — S. P. Watf. Comp. Inc. 8vo. 405. cap. 20. cites Parsons Law. 100. cap. 13. — * Br. Quare Impedit, pl. 8. cites 21 H. 6. 44. S. P.

Where two Patrons present, the Bishop is wont to decree a Process commonly called *Negotium De Jure Patronatus*, (that is) a Day fixed and certain is appointed by the Bishop to sit in the Church that is void, and a Mention decreed to be served on the Patrons presenting, and the Clerks presented, then and there to be present to see Proceedings in the said Business according to Law, to which End a Citation issues to 12 Persons, whereof 6 of the Clergy and 6 of the Laity, all of the Neighbourhood of the said vacant Church, to be then and there also present by Way of an Inquest, and on their Corporal Oaths, to inquire on certain Articles then ministred to them, touching the Right of Presentation to the said Benefice. These Articles consist chiefly of these four Heads, viz (1.) *Who last presented* to the said Church when it was last void, as also for the last two or three Times when it was void. (2) *Whether the Person or Persons who last presented*, or these last two or three Times or Turns, at the Time and Times of Vacancy of the said Church, did present in his or their own proper Right and Title. (3) *Whether either of the Clerks now presented be known or suspected of any Notorious Crime*, or of Heresy, Simony, Perjury, Adultery, or Drunkenness. (4) *Whether either of the Clerks now presented, hath given or promised*, either by himself, or any other, for him and in his Name, or by or with his Consent or Knowledge, any Money or other Gratuity directly or indirectly, for obtaining of his Presentation to the said Benefice to the Patron thereof, or to any other who presented the said Clerk,

2. This Writ issues out of the Chancery of the Ordinary. 34 D. 6.

39. b. Per Hoyle.

Clerk, or caused him to be presented. On which Articles, if it be found by the Verdict of the said Jury, that such or such of the said Patrons was in the Possession of the Presentation at that Time, when the Church was last void, then is his Clerk to be admitted, if there be no other legal Impediment to hinder it, that is, nothing to affect him with, contained in the 3d or 4th last precedent Articles. Godolph. Rep 1-9. 180. cap. 16. Sect. 2.—S. P. Wats. Comp. Inc. Svo. 422. cap. 22.—S. P. Mal. Qua. Imp. 109. cites Gibl. Cod. 816. And says further, that the Jure Patronatus being awarded, is to be executed according to the Forms of proceeding in the Ecclesiastical Courts; That the Bishop, if he pleases, may sit himself as Judge; but that the usual Way is by Commission issued to his Chancellor, or to such other Person or Persons as he shall judge proper; That a general Citation of all Opposers be also affixed to the Door of the vacant Church in Time of Divine Service; That there shall be a Citation of a Jury of 6 Clergymen and 6 Laymen of the Neighbourhood, or of as many more as the Bishop pleases, the Proportion being observed of Clergy and Laity, that there be as many of one Sort as the other; And these are bound to appear under Pain of Spiritual Censures, the Clergy of Sequestration, and the Laity of Excommunication; and if there be 6 of each, the rest are pronounced Contumacious, and the Court proceeds. That the Clergy and Laity, who are of the Jury, be sworn to make Faithful Enquiry, viz. 1st. A Clerk, and then a Layman; The Articles or Heads of Enquiry are to be delivered to them, As, [besides others mentioned above] Whether the Church became vacant, and if vacant, how it became so? Who hath the Inheritance of the Advowson? Who ought to present to the vacant Turn? With such other Circumstances as the Bishop shall see Cause to inquire into; That the Parties or their Counsel do set forth their Title, and produce their Evidences; and that the Verdict be given, either the same Day, or at such Time and Place as the Judge shall assign.

3. The Bishop ought to make this Inquisition at his Peril. 34 H. 6. 11. b. Per Prifot.

4. This Writ shall be sued at the Cost of the Ordinary; because it is for his Excuse, and for his Case. 5 H. 7. 22. Per Brian; but Keble contra.

5. Contra 34 H. 6. Per Danby and 2 Doctors. 35 H. 6. 19. Per Prifot.

6. But it seems contra, because the Ordinary is not bound to award a Commission to inquire De Jure Patronatus Ex Officio, but at the Prayer of the Parties. 8 E. 4. 24. b. Per Curiam. 5 H. 7. 20. b. Per Keble. 22 H. 6. 30. Per Mark.

7. For when the Church is Litigious, he may suffer the Lapse to incur without Inquiry. 34 H. 8. 41 Curia. 35 H. 6. 18. b. And if he shall be compelled to award it Ex Officio, then he shall never have any Lapse. 35 H. 6. 19. And by 34 H. 6. 38. it shall be at the Costs of the Parties; because the Ordinary is Judge in this Case.

Br. Nugat-
tion, pl. 3.
cites 33 H.
6. 13. That
in Quare
Impedit the
Bishop
pleaded, that
the Ltw
of Holy
Church is,
that where
the Church
is Litigious,
by different
Clerks be-
ing present-
ed to him by
Contending
Patrons, that
the Ord-

nary is not bound to present any Clerk till he has awarded a Commission to inquire of the Right of Patronage, and this at the Costs of some of the Patrons or their Clerks, and that if six Months pass they may make Collation by Lapse. And per Cur. It suffices to say that the Church was Litigious, and shew how, as above, and that the 6 Months pass'd, and he made Collation by Lapse, Judgment &c. without shewing the other Matter above; for it is a good Replication for the Plaintiff to say that he required him to inquire De Jure Patronatus, and he refused; for then he is Disturber, and so his Plea good, and the other Matter is only Surplusage; for it is only to excuse the Bishop when he is thereof accused. Nota, Per Judicium—It was agreed that the Jure Patronatus shall be sued at the Costs of the Party or his Clerk, and the Bishop is not bound to be at the Costs, for he is Judge in this Case; but where the Court writes to the Bishop to certify Bailardy or Matrimony, or the like, there he shall do it at his own Costs; for there he is a Minister. Br Quare Impedit, pl. 12. cites 33 H. 6. 12 & 32. 34 H. 6. 11. 38 & 35 H. 6. 18.—S. P. Br. Colls, pl. 2. cites 34 H. 6. 38

8. If the Ordinary be required when the Church is Litigious, to award a Jure Patronatus, he ought to award it, otherwise he is a Disturber. 34 H. 6. 40. Per two.

Br. Nugat-
tion, pl. 3.
cites 33 H.
6. 13.—Br.
Quare Impe-
dit, pl. 12. cites 34

dit, pl. 12. cites 34 H. 6. 11. 38. and 35 H. 6. 18.—Wats. Comp. Inc. Svo 191. cap. 12. cites 34 H. 6. 40.

9. 22 H. 6. 30. It is said that the Party, at whose Suit this Writ is awarded, shall name the Commissioners; but there the Judges say that is marvellous that he shall assign his Judges.

See the
Notes on
pl. 2.
S. P. Per
Robert Ch.
J. That tho'

10. If one only presents, yet the Bishop may award a Jure Patronatus. 21 H. 6. 44. 34 H. 6. 40.

but one pre-
sents, yet if
the Bishop

11. If one only presents, a Jure Patronatus may be awarded.
21 D. 6. 44.

makes Doubt of his Title, as in many Cases he may justly, being a Stranger to it, he may require Satisfaction by Jure Patronatus; For, a Notatione Nominis, it doth not imply diverse Parties, as a Juris Utrum doth, but is like a Quo Jure. And therefore take the Case to be, that a Parson is deprived by the Ordinary, or reads not his Articles, in which Cases the Church is void, and yet Notice must be given to the very Patron for that Time, or else the Lapse incurs not (which is inconvenient for the Church, and a Prejudice to the Ordinary) how shall he now assure himself of a sufficient Notice? for if he give Notice to him that is not Patron for this very Turn, his Notice is vain, and the Patron perhaps knows not of the Deprivation, or if he knows it, needs not present without Notice given him. I hold, in this Case, his Way is to award a Jure Patronatus, with solemn Premonitions quorum Interest, and then Inquiry being made who is Patron, then to give him Notice; and if he presents not within 6 Months, then the Ordinary may collate, though that shall not bind the very Patron, yet it shall excuse from Disturbance upon special Matter shewed. Hob. 318. pl. 391. in Case of Elvis v. Archbishop of York.

If 2 present
severally,
there 2 Com-

12. But if 2 present, there ought to be awarded 2 Jure Patronatus's.
21 D. 6. 44.

missiens De Jure Patronatus shall be awarded; And if the one be found Patron by the one and the other, by the other, there the Church is litigious. And if their Titles are not discussed with in the 6 Months, the Bishop may present by Lapse. Br. Quare Imgedit. pl. 80, cites 21. H. 6. 44. — Wats. Com. Inc. Svo. 406. cap. 20. cites S. C. But adds, That Sir Simon Degg makes a Quare whether the Bishop in this Case may let the Church lapse, and so collate? Or whether he be not bound to admit one of the Clerks at his Election? and cites Parsons Counsellor 14.

Jus Patro-
natus binds
not the true
Patron in his
Quare Im-
pedit, but is
final even to

13. If the Ordinary admits the Clerk of him, for whom the Right is found upon this Writ, this shall excuse the Ordinary; For he shall not be a Disturber, tho' the Right in a Quare Impedit be after found for the other. 34 D. 6. 11. b. Per Prisot. 34 D. 6. 38.

the true Patron so far that he cannot impute Disturbance to the Ordinary following that Verdict. Hob. 317. Elvis v. Archbp. of York & al.--Watf Comp. Inc Svo. 419. cap. 21. cites same Cases,

Watf Comp.
Inc Svo.
419. cap. 21.
cites S. C.

14. And if the Commissioners certify otherwise than is found before them, yet if the Ordinary does according to the Certificate he is excused
22 D. 6. 30. Per Newton; For the Issue is between the Ordinary and Patron, which was the Certificate of the Commissioners.

* Fol. 385.

15. But if the Right be found for the Patron upon this Writ, and the Ordinary after admits the Clerk of the other Patron, it shall be at his Peril; For * he may well enough admit him, notwithstanding the Commission, and finding for the other. 34 D. 6. 11. b. For it seems that it is but for his better Information; But see 22 D. 6. 30. where the Ordinary alleges a certain Certificate by the Commissioners for a Patron, and the Plaintiff in a Quare Impedit, before the Right tried in it, traverses that the Commissioners did not certify the Right for the other Patron. 34 D. 6. 41.

S. P. Br.
Quare Im-
pedit. pl. 12.
cites 33 H. 6.
12, & 32.
34 H. 6. 11.
38. & 35

16. But when the Right in this Writ is found for one Patron, and the Ordinary admits the Clerk of the other Patron, if it be after found in Quare Impedit, that the Right appertains to the Patron for whom it was found in the Jure Patronatus, he shall be a Disturber. 34 D. 6. 11. b. by Prisot.

H. 6. 18. per Prisot.—And though the Bishop in going against the Verdict Chances to admit the Clerk of the true Patron, yet this will not excuse him from Disturbance in Quare Impedit by the Person for whom the Verdict was found; For it is no Plea to say that he admitted the true Patron's Clerk. Watf Comp. Inc. Svo. 419, 420. cap. 21.

* The Or-
dinary is
bound to ad-
mit the
Clerk of
him that is
found Patron

17. Otherwise it is where it is found for him who is presented, Quare whether the Ordinary may suffer Lapse to incur after it is found for one in this Writ. It seems that he cannot; For 35 D. 6. 19. by Prisot he shall not have any Lapse after it is found for one; For he is * bound to admit his Clerk. 21 D. 6. 44, 45.

by the Inquisition de Jure Patronatus, if he presents after the Verdict, whether he presented before the Commission or not. Br. Quare Impedit. pl. 80. cites 21 H. 3. 44 per Newton, Paston, and others. — Watf. Comp. Inc. Svo. 405. cap. 20.

18. If it be found in this Writ for one Patron, the Ordinary is not bound to admit his Clerk without a New Request made by the Clerk, and it needs not for the Patron to make a New Request or Presentation. 34 D. 6. 12. Per Curiam.

Watf. Comp. Inc. Svo. 191. cap. 12. cites S. C. — S. P. Br. Quare Im-

edit, pl. 12. cites 33 H. 6. 12. & 32. 34 H. 6. 11. & 38. 35 H. 6. 18. — In such Case the Ordinary is not bound to admit such Patron's Clerk if he does not present him, and labour to have him admitted. Br. Quare Impedit. pl. 80. cites 21 H. 6. 44. Per Newton, Paston, and other Justices.

19. If a Disturber presents without any other, the Bishop may inquire by the Writ. 34 D. 6. 40.

Watf. Comp. Inc. Svo. 421, 422. cap. 21. cites S. C. — S. P. Br. Quare Impedit. pl. 12. cites 33 H. 6. 12. & 32.

20. But if in the said Case it be found that another Stranger has Right, if this Stranger presents within the 6 Months, the Ordinary is obliged to admit his Clerk; But if he does not present within the 6 Months, then the Ordinary is obliged to admit the Clerk of the Disturber. 34 D. 6. 40.

34 H. 6. 11. 38. & 35 H. 6. 18. per Prior.

(P. d. 2) *Ne Admittas*. Lies for whom, when, and in what Cases.

1. **W**HERE one hath an *Action* of Darrein Presentment, or of Quare Impedit, depending in the Common Pleas and he supposes that the Bishop will admit the Clerk of the Defendant pendant the Plea betwixt them; He may sue a *Ne admittas*, directed to the Bishop. F. N. B. 37 (F)

The Course to stop Strangers from presenting *Pendente*

Brevi is, after the Quare Impedit is depending, to sue a *Ne Admittas* to the Bishop, and if the Bishop then admits the Clerk of any other pending that Suit, and the Plaintiff recovers, he shall have a *Quare Incumbent*, and thereby remove any that comes in hanging the Writ by whatsoever Title he comes in, and shall force him, who hath Right, to recover by Quare Impedit; But if he sues not such Writ, if then the Incumbent of a Stranger should come in by good Title *Pendente Brevi*, he shall bar him in *Sine Factis*. and shall hold him out. Per Popham Ch. J. Cro. J. 93. Mich. 3 Jac. B. R. in the Case of Lancaster v. Lowe. — Watf. Comp. Inc. Svo. 428, 429. cap. 22.

2. This Writ of *Ne admittas* lieth for the Plaintiff in a Quare Impedit. S. P. Br. not F. N. B. 37. (F)

S. P. Br. not tr. the Writ of Quare Im-

edit be returned, and not Mesne between the Teste and the Return in Bank; For no Plea is pending. Br. Quare Impedit, pl. 124. cites 2 E. 4. 11; Per Moile. J. — Watf. Comp. Inc. Svo. 428. cap. 28. cites S. C.

It seemeth that the Defendant may sue his Writ as well as the Plaintiff, if the Defendant do suppose that the Bishop will admit the Clerk of the Plaintiff pendant the Writ. F. N. B. 37. (H)

3. *Ne Admittas* ought to be sued within the 6 Months after the Avoidance; for after the 6 Months he shall not have this Writ, because then the Bishop may present for Lapse; And therefore it is in vain then for to sue this Writ, because the Title to present is then devolved unto the Bishop; But the King may sue this Writ after the 6 Months, where he hath a Quare Impedit depending, or Affize de Darrein Presentment, because that Nullum occurrit Regi; But there is a Rule in the Regiter, thus, Notandum est, quando Rex presentat ut in Jure Coronæ, tunc incurrit ei Tempus. But this is not Law at this Day. F. N. B. 37 (F)

Watf. Comp. Inc. Svo. 428. cap. 28. cites S. C. & Regit. Orig. 31. b.

* S. P. Warf.
Comp. Inc.
Svo. 428.
cap. 22. cites
S. C.

4. *Ne Admittas* does not lie, if the *Plea* be *not depending in the King's Court* by *Quare Impedit*, or *Affise of Darrein Presentment*; And therefore there is a * *Writ* in the Register directed into the Chief Justice of the Common Pleas, to certify the King in the Chancery, if there be any Pleas depending before him and his Companions by *Writ* betwixt such and such Persons &c. and therefore it seemeth the *Writ* of *Ne Admittas* shall not be granted before the King be certified in the Chancery, that such Pleas of *Quare Impedit* or *Darrein Presentment* be there depending in the Common Pleas; But yet the *Writ* of *Ne Admittas* may be granted out of the Chancery directed unto the Bishop, that he do not admit &c. before the King be certified in the Chancery, that such Plea of *Quare Impedit*, or *Darrein Presentment* is depending in the Common Pleas, and then the Party grieved may require the Ch. J. to certify the King in his Chancery, that no such Plea is depending there, and thereupon the Party grieved shall have such *Writ*. F. N. B. 37 (H)

* *Writ* to the Bishop to admit a Clerk is a Judicial Limitat 12 Rep. 59. cites Dyer.

(Q. d) * *Writ to the Bishop. At what Time it shall be granted.*

Writ Comp.
Inc. Svo.
524. cap.
27. cites
S. C. that
the Plaintiff
shall not have

1. **I**n a *Quare Impedit* against the Patron and Incumbent, if a *Writ* to the Bishop be adjudged against the Incumbent upon his Plea, yet *Writ* shall not issue till the Plea between the Plaintiff and Patron be determined. 25 E. 3. 34. b. adjudged twice.

shall not have *Writ* to the Bishop until and unless it be also adjudged against the Patron

Writ Comp.
Inc. Svo. 525.
cap. 27. cites
S. C.—If
two Defen-
dants plead

2. **I**n *Quare Impedit* against two, if Judgment be given against the one upon Nient Dedire, no *Writ* to the Bishop shall be granted against the other, till the Plea of the other be determined; for he may foreclose him of the *Writ*. 17 E. 3. 53.

several Bars in *Quare Impedit*, and the one is found against the Plaintiff, and the other with the Plaintiff, the Plaintiff shall not have any *Writ* to the Bishop. Tho' the Plea of one be tried first, and found for the Plaintiff, no *Writ* to the Bishop shall be awarded till after the other Issue be tried. Jenk 95. pl. 85.—Writ Comp Inc. Svo. 525. cap. 27. cites S. C.

3. **I**f the King recovers in *Quare Impedit* against J. S. by Nient Dedire, having another *Quare Impedit* pending at the same Time against the said J. S. and W. N. he shall have *Writ* to the Bishop immediately, against J. S. upon the Recovery before the Plea in the other *Writ* determined, because those are several Originals. 17 E. 3. 58.

Writ. Comp.
Inc. Svo. 525.
cap. 27. cites
S. C.

4. But if the King recovers against an Incumbent of a Provendary, because he claims of the Collation of the Bishop of the Diocess, yet if the King has another *Quare Impedit* against the Bishop alone of the same Provendary, no *Writ* to the Bishop shall be granted against the Incumbent till the Plea be determined between him and the Bishop, tho' those are several Originals. 25 E. 3. 47. adjudged.

5. Before *Writ* issues to the Bishop, *Writ* shall be awarded to the Bishop to inquire if the Church be void, and also of the Value of the Church, and if the 6 Months were pass'd, or not. Br. *Quare Impedit*, pl. 49. cites 7 H. 4. 34. 36.

Quare Impedit against 3, the Plaintiff recovered by Default against the one; and Judgment was that he have

6. **I**n *Quare Impedit* against 2, *Process* continued to the Distress at which Day the one appeared, and the other made Default, and *Writ* to the Bishop was awarded against the one, and the other compell'd to answer by the Opinion of the Court. Br. *Quare Impedit*, pl. 89. cites 14 H. 7. 19.

Execution till it be tried against the other Defendant; for otherwise this Execution against the one alone shall

abate the Writ against the others ; for he cannot recover the Presentation against the others, when he has the Presentation by the first Judgment ; As in Trespass against two, and it is found against the one, and he takes Execution against him, the Writ shall abate against the other. Br. Quare Impedit, pl. 137 cites 20 E. 4. 1. and 10 E. 4. 11. 13.

7. A Man *sued divers Quare Impedit* against the Bishop, and he was *Non-suit in all but one Writ* ; the Defendant had not a Writ to the Bishop until that Writ was determined. F. N. B. 38. (R)

S. P. Watf.
Comp. Inc.
Svo. 520.
cap. 27. cites
12 R. 2

Brief al Eveſque 16.

8. A. recover'd in a Quare Impedit against B. and C. and had Judgment to have a Writ to the Bishop. And a Writ of Enquiry of Damages issued. Now the Defendants brought Error. And by the Court that Writ shall abate, because Judgment is not given upon the intire Record, and that a Writ to the Bishop shall not issue *till the Writ of Enquiry of the Value be return'd*, unless the Plaintiff release the Damages ; And that by the Court and all the Clerks. Noy 66. Mich. 39. 40 Eliz. C. B. The Bishop of Gloucester & al. v. Veal.

Watf. Comp.
Inc. Svo.
526 cap. 27
cites S. C.

(R. d) Writ to the Bishop. *What Court may award it.*

Fol. 386.

1. **T**HEN who hold Plea in a Franchise, cannot award a Writ to the Bishop. 11 H. 6. 3.

2. In Wales a Writ cannot be awarded to the Bishop by the Justices there. 11 H. 6. 3.

A Writ was
awarded to
the Arch-

bishop of Canterbury, because the Bishop of St. Davids was Party ; and it was assigned for Error for that the Justices of the *Grand Sessions* have no Power to write to him, they having no Power to punish him if he does not obey. And the Court doubted of that Point ; but it seems *prima facie*, that they well may write to him ; for it is *now a Court of the King's*, and a Quare non Admisit lies, if he does not admit. But when they were the Marches in Wales, they had no such Power ; and for that Reason a Quare Impedit did lie in the adjoining Counties, but not so at this Day. But they would advise. Cro. C. 342. Cort v. Bp of St. David's, Owen and Pritchard.—Watf. Comp. Inc. Svo. 549 cap. 28. cites S. C. —Jo. 332. S. C. Judgment was affirm'd Per tot. Cur.—Sid. 92. at the End of *Winn's Case*, the Reporter says it seems that the Grand Sessions of North Wales cannot write to the Bishop ; and that this is the Reason that Quare Impedit does not lie there.—

(S. d) Writ to the Bishop. *Who shall have it.*

1. **I**N Quare Impedit the Defendant shall have Writ to the Bishop, if it be found for him ; for he is Actor as well as the other. H. 6. 31. 18 E. 3. 15. b.

S. P. Watf.
Comp. Inc.
Svo. 525.
cap. 26.

2. In a Quare Impedit, if the Defendant makes Title to himself and a Stranger to the Church, and after the Plaintiff is Nonsuited, yet the Writ to the Bishop shall be awarded only for the Defendant, and not for the Stranger also, because he is not nam'd in the Writ. 13 E. 3. Brief al Eveſque 20. 25.

Watf. Comp
Inc. Svo. 520.
cap. 27. cites
S. C. —
S. P. F. N. B.

new Notes (a) cites S. C. And says, See also for this 11 H. 6. 8. where A. B. and C. Parceners brought a Quare Impedit against C. who sever'd, and afterwards A. and B. were Nonsuited ; C. shall not have a Writ to the Bishop without Title shewn, and yet on the Title shewn the Title would appear for the Plaintiff. See 15 E. 3. pl. 20 & 25.

39. (A) and
there in the

3. *Baren and Feme brought Quare Impedit*, and the Feme died pending the Writ, yet the Writ remained good, and the Baren had Writ to the

Bishop

Bishop as Tenant by the Curtesy. Br. Quare Impedit, pl. 67. cites 38 E.

Br. Brief, pl. 158. cites 7 H. 6. 34. S. C. 3. 35. 4. The Incumbent shall not have a Writ to the Bishop where his Plea is found for him, if the Patron makes Default, and will not plead. Br. Incumbent, pl. 9. cites 7 H. 6. 36.

(T. d) Writ to the Bishop for a third Person not Party. In what Cases the Writ shall be awarded for a third Person not Party to the Writ.

Watf. Comp. 1. Inc. Svo. 528. cap. 27. S. P. F. N. B. 31. (F) in the Note in the Marg. cites 7 E. 2. Darrein Presentment 26 E. 3. 41. And adds, That therefore one cannot make Title to a Presentment in Time of War.—F. N. B. 39 (C) Because the Writ is Quis Advocacioni ultimo presentavit personam &c. And in the new Notes there (d) says, See Bracton 248. accordingly, where the Affise is taken Per modum Affise, and not Per modum Jurata. And says, See also 13 E. 3. Brev. al Evesque 20 by Aldred, and 17 E. 3. 22. by Wilby.

In an Affise of Darrein Presentment between two Men, if [it be] found that neither the one nor the other has Right to present but a 3d Person not Party to the Writ, the Writ shall be awarded for him. 17 E. 3. 23. Wilby said that it had been so seen.

(U. d) In what Cases the King shall have a Writ to the Bishop, [tho' he be] Not Party to the Writ, [or tho' the Issue be not found for him.]

Watf. Comp. 1. Inc. Svo. 520. cap. 27. cites S. C. Hob. 118, 119. pl. 149. S. C. reports, that the Jury found that the Advowson—**I**n Quare Impedit by the King, if the Issue be, Whether the King has all the Advowson or not, and the Jury finds, That he has only a 3d Part, but that now it is his Turn to present; tho' the Issue is found against the King, yet because it appears that the King has Title, the Writ shall be awarded for him. Rich. 14 Ja. B. adjudg'd between the King and the Bishop of Rochester. Hobart's Reports 165. Same Case. For this Matter, which is found, is not out of the Issue.

son in Fee was presentable by the King by 2 Turns conticuous, and by the Bishop for the 2d Turn; and that the King's first Turn was satisfy'd by presenting his Clerk, now dead, and that this is the King's 2d Turn, and concluded, If upon the whole Matter the Court doth judge, That the King was seised of the Advowson aforesaid, ut de uno Grosso per se ut de feodo & Jure, then the Jury found so; if not, then contrary. And tho' this Verdict did not find the Issue for the King, (for the Issue was to be understood of the whole Advowson) yet because it did clearly appear to the Court by the Verdict, and that not out of the Issue, that this Presentation did of Right belong to the King, therefore the Court did award a Writ to the Bishop for the King, and to remove the Clerk of the Bishop; and to this also the Bishop assented, which was so enter'd in the Record of the Judgment. Brownl. 164. S. C.

Watf. Comp. 1. Inc. Svo. 527, 528. cap. 27. cites S. C. Mo 8-2 Trin 14 Jac. S. C. by Name of the University of Cambridge the **2. In Quare Impedit** by the University upon the Statute, because J. S. was a Recusant, if Defendant pleads in Bar, That J. S. was convicted for a Recusant, and that the Manor, to which this Advowson is appendant, was seised for the King, for his Part for the Recusancy, and after the King granted to him the Manor with the Appurtenances &c. upon which the University comes and acknowledges the Plea to be true. In this Case a Writ shall be awarded to the Bishop for the King, because nothing passed out of the King by the Grant without naming the Advowson, and so the Right remains in the King. Rich. 14 J.

14 Ja. B. Adjudg'd. The university of Cambridge and Takefley's Bishop of
 Case. Hobart's Report s 169. S. C. Norwich.

the Title to the King appears upon the Record, there the Court will award a Writ to the Bishop for the
 King; but not where the Title to the King appears upon Evidence. For where

3. If an Abbot brings Assise of Darrein Presentment, and it is found for the Abbot, and in inquiring of the Collusion the Collusion is found, the King upon this Matter shall have Writ to the Bishop without other Presentment. 21 E. 4. 3. b. pl. 5. Per Chock. So in Quare Impedit between Common Persons, if it appears by their

Title, that the King has Right to present, he shall have Writ to the Bishop without other Matter shewn. 21 E. 4. 3. b. pl. 5. Per Chock. Matter shewn.

4. In a Quare Impedit * betwixt 2 Strangers, if there doth appear to the Court a Title for the King, they shall award a Writ unto the Bishop for the King. † F. N. B. 38. (E) Ibid. in the new Notes (a) says, See Accordant

Per Choke. ‡ 11 H. 4. 71. Per Hankf. And so it shall issue if it be found against the King in a Quare Impedit; and yet if the Right appears for the King on a Special Verdict, he shall not have a Writ to the Bishop. Rex versus Episc. Rossen. See 4 Eliz. 243. 16 H. 7. 12. F. Brief al Eveſque, 13. Bro. 86. 44 E. 3. 10. Stamford 95. a. ——— ‡ Br. Brief al Eveſque, pl. 8. cites S. C. & P. Per Hank. and Hill. But Culpeper Contra. And Brooke makes a Quare.

* S. C. cited by Walmſley. Le. 63, 64, pl. 84. in Case of Erbury v. Cornwall Mich. 29 El. and said, That the Judges shall in no Case respect the Title of the King being a Stranger to the Writ, but where a Title appears for him upon the Pleading or otherwise within the Record, and so is 11 H. 4. 224 [-1. b.] by Hankford. But if a clear Title for the King be confest'd by the Parties upon Pleading, a Writ to the Bishop shall issue for the King. So if such Matter appears in Evidence &c. the Land is seizable into the Hands of the King. — || S. P. per Doderidge J. Mo. 901. cites 33 H. 6. 34. 16 H. 7. 12. 11 H. 4. 71. b. pl. 5. F. N. B. 38. (E)

Hobart Ch J. said, That the King has a Prerogative, that where clear Title appears for him, Writ to the Bishop shall be awarded for the King. But he said, This is to be intended where his Title appears by the Confession of the Parties, or by Title without Difficulty or Question; for upon Nihil dicit Writ shall not issue for the King, nor upon Title appearing by Evidence to the Jury, as was held in the Case of the University of Cambridge v. Chylgrave and Darley. But if it appears upon the Record of the Pleading, or by the Confession of the Parties, the Writ shall issue for the King; otherwise, no. Mo. 904. in the Case of Colt and Glover v. the Bishop of Coventry and Litchfield.

† S. C. & P. Arg. and cites 21 E. 3. 30. and 12 H. 7. 12. But where the Title appearing was only Matter of Fact suggested by Plea of the Attorney-General in a Writ of Error brought of a Judgment, the Court held, That the Plea ought to be rejected for that Reason of its being Matter of Fact only, and especially in this Writ of Error, the Judgment being given in C. B. and Execution for the Damages being given in the Case, and increased by the Statute of 3 H. 7. which is not to be estopped, or the Parties to be delay'd by such bare Surmises, nor being ground'd upon any Matter of Record. And after further Argument by Counsel all the Court Seriatim deliver'd their Opinions, That the Pleading is merely void, it being upon a Surmise, and without any Record shewn. And that there ought to be a clear Right and Title appear for the King, and enjoy'd by the Parties in Pleading or otherwise fully apparent: For if not, the Court ought not to award a Writ Ex Officio for the King. Cro. C. 192 pl. 4. Mich. 16 Car. B. R. Resolv'd by all the Justices of B. R. in the Case of Yates v. Sir John Dryden & al. — The Case was this: A Quare Impedit was brought by A. B. and C. against Y. and the Bishop of P. in which Y. the Incumbent pleaded, That he was Parson Incumbent of the Presentment of the King, to whom he derives a Title as settled in Fee of an Advowson in Grools. Upon Issue join'd, a Verdict was found for the Plaintiff, which likewise found the several Points of the Writ. The Plaintiffs had Judgment to recover, and a Writ awarded to the Bishop to remove the Incumbent, and admit the Clerk of the Plaintiffs; and likewise Judgment of Damages for Half a Year amounting to 100l. The Defendant brought a Writ of Error; and pending that Writ, the King brought a Writ of Right of Advowson; And by Motion to the Court, the Proceedings upon the Writ of Error were stay'd till the Writ of Right should be tried. Thereupon a Special Verdict was found contrary to the Verdict in the Quare Impedit. After this Verdict, one of the Tenants died. The Counsel for the King insisted strongly, That the Verdict in the Writ of Right of Advowson (being a Writ of the highest Nature) should control the Verdict in the Quare Impedit; and the Verdict in Quare Impedit found, That James Ellis, who was alleg'd by the Defendant in the Quare Impedit to have been admitted, instituted and inducted Ad Ecclesiam Prædictam ad Præsentationem dictæ nuper Regine Elizabethæ modo & Forma prout the Defendant had alleg'd, was not so admitted &c. and the Special Verdict in the Writ of Right found, That the said James Ellis was so admitted &c. ad Ecclesiam Prædictam ex Præsentatione dictæ nuper Regine, which being a more high Action, and expressly contrary to the former Verdict in the Quare Impedit, destroys the Plaintiff's Title; for the Queen had gained Right against all by that Presentation, but him who had the very Right; and tho' the 1st Jury had found, That the Queen had Minus jus habendi Præsentationem, yet so far as the Queen presented she had gained the Possession; and then had Major jus than he who had not any Title; and it appears not that the Plaintiffs have any Title, and therefore prout a Writ to the Bishop. The Court held, That the Verdict in the Writ of Right being but a Special Verdict it does not appear, if the Writ had not abated by Death) whether Judgment should have been for the King or for the Plaintiff, as this Case is, And no clear Title appears for by the Death of one of the Tenants the Writ of Right abated.

and the 2d Verdict not in Force; And that there is no such Contrariety appears by the Verdict; for the 2d Verdict, if it had been in Force, is no concluding Record, but only an Evidence, which may well be contradicted. But they all resolv'd, That tho' the Verdict had been in force, and had been to the contrary, yet being in this Court by Writ of Error, which was only to affirm or reverse the Judgment in C. B. they would affirm the Judgment, and that there was not any Error therein; which they did, and awarded a Writ to the Bishop. Cro. C. 585. Trin. 16 Car. Dryden & al. v. Yates & al. And Ibid. 589. Mich. 16 Car. B. R. Yates v. Dryden & al.

5. In a Quare Impedit the Issue was, If the Advowson was appendant to the Manor of D. or in Gross; and the Jury found, That it was appendant; and further found, That the Queen had Right and Title to present, for she had presented at the two last Avoidances. And Per Anderson and Periam J. If it appears unto the Court upon the Pleading, that the King had Title to present, the Court shall award a Writ to the Bishop for the King; but here appeareth no Title for the Queen upon the Pleading, but only upon the Verdict, so as the one Part or the other may answer to it; And because the Jury found for the Plaintiff, the Title found for the Queen shall not be respected, but as meer Nugation and Surplusage; for the same was out of their Issue and their Charge; and it is no more than if one comes into the Court, and informs us of any Title for the Queen, there the Court ought not to regard it. 1 Le. 323. pl. 455. Trin. 31 Eliz. C. B. Norwood v. Dennis.

6. If in Quare Impedit by the King the King and Party are at Issue, which is found against the King, and Title appears for the King by Nient dedire of the Party, yet the Court shall not adjudge for the King. Otherwise it is where the Party confesseth the King's Title. Cro. J. 216. Hill. 6 Jac. B. R. The 3d Resolution in the Case of Cumber v. the Bishop of Chichester and Green.

See (Y. d) (X. d) Writ to the Bishop *without Title*. In what Cases.

S. P. Br. 1. **In a Quare Impedit, if the Writ abates by Pleading of Misnomer of the Plaintiff, the Defendant shall not have any Writ to the Bishop.** 31 H. 6. 15.

Br. Brief al Eveſque, pl. 26. cites S. C. — Watf. Comp. Inc. 8vo. 522 cap. 27. cites S. C. — S. P. 7 Rep. 27. b. cites F. N. B. 38. (M)

S. P. Br. 2. **So if Defendant pleads Misnomer of himself he shall not have any Writ to the Bishop.** 31 H. 6. 15.

Br. Brief al Eveſque, pl. 26. cites S. C. — F. N. B. 38. (M) — S. P. Watf. Comp. Inc. 8vo. 522. cap. 27. cites S. C.

S. P. Br. 3. **So if the Writ abates for Insufficiency, the Defendant shall not have any Writ to the Bishop.**

Br. Brief al Eveſque, pl. 26. cites 31 H. 6. 15. — F. N. B. 38. (M) — If it abates for false Latin, or for Want of Form; as *Nominare for Presentare* &c. the Defendant shall not have Writ to the Bishop. Br. Brief al Eveſque, pl. 10 cites 14 H. 4. 11. Per Hank clearly. — S. P. But the Plaintiff may have a new Writ of Quare Impedit. Watf. Comp. Inc. 8vo. 451, 452. cap. 27. cites 3 H. 6. 3. 31 H. 6. 15. F. N. B. 38. b. 38 Aff. 9. 7 Rep. 27. Sir Hugh Portman's Case.

But if the Defendant pleads in Abatement of the Writ by Matter in Fact, he shall not have Writ to the Bishop, if he does not make Title. Br. Brief al Eveſque, pl. 9. cites 12 H. 4. 11. Per Hull clearly.

S. P. Br. 4. **But if the Writ abates for Default in the Count, the Defendant shall have Writ to the Bishop.** 31 H. 6. 15,

Br. Brief al Eveſque, pl. 26. cites S. C. — Watf. Comp. Inc. 8vo. 519. cap. 27. cites S. C.

5. In a Quare Impedit against diverse Patrons, if the Writ abates because one of the Defendants was dead before the Writ purchased, the Defendants shall have a Writ to the Bishop. 11 H. 6. 53. Warf. Comp. Inc. Svo. 521. cap. 27. cites S. C.

6. In a Quare Impedit against Patron and Incumbent, if the Patron makes Default, and the Plaintiff and Incumbent are at Issue upon Plea in Abatement of the Writ, (scil.) Whether the Plaintiff was made Knight after the last Continuance, and found for the Defendant, the Writ shall abate, but Defendant shall not have Writ to the Bishop. * 7 H. 6. 37. E. Adjudg'd. F. N. B. 38. (H) S. P. and there in Marg. cites 11 H. 6. 15. Per Cur. e contra of the Patron;

had appear'd and the Incumbent made Default, (and says) in 11 H. 6. 37. 12 H. 4. 16. upon Plea of the Incumbent a Writ was awarded to the Bishop. * Br. Brief al Eveſque, pl. 3. cites S. C. that the Plaintiff and Incumbent were at Issue, but takes no Notice what the Issue was. — Warf. Comp. Inc. Svo. 521. cap. 27. cites S. C. — S. P. Br. Brief al Eveſque, pl. 13. cites 7 H. 6. 15. where the Writ was abated without Writ to the Bishop by Advice of the Justices of both Benches.

7. But if ſuch Plea had been found for the Patron he should have Writ to the Bishop. Br. Brief al Eveſque 30. Warf. Comp. Inc. Svo. 521. cap. 27. cites S. C.

8. In Quare Impedit for the Church of D. if Defendant saith, No such Church within the same County, the Plaintiff shall have a Writ to the Bishop. 8 H. 6. 37. 9 H. 6. 17. Curia. Contra 45 E. 3. 6. Br. Quare Impedit, pl. 77. cites S. C. —

Inc. Svo. 520. cap. 27. cites S. C. For this can be no Damage to the Defendant; for the Writ must be to the Church named in the Declaration; and if there be no such Church the Plaintiff can have no Profit or Advantage by this Writ; and if there be such a Church the Defendant has no Prejudice, for he is so far from claiming Title to that Church that he knows nothing of it. Quare. Br. Brief al Eveſque, pl. 1. S. P. cites 9 H. 6. 10.

9. If one Tenant in Common brings Quare Impedit against the other, and this appears in the Count, and the Defendant demands Judgment of the Count, because it appears thereby that they are Tenants in Common; whereupon the Court abates it. yet the Defendant shall not have any Writ to the Bishop, because he has not made Title; for tho it appears by the Count, that the Defendant has Right to the Advowson, yet this is in Common with the Plaintiff, and so he ought to have the Writ. 20 E. 3. Quare Impedit 63. Adjudg'd. Warf. Comp. Inc. Svo. 523. cap. 27. cites S. C. — Ibid. 523, 527. cites S. C.

10. But in Qua. Imp. if the Plaintiff counts, and Defendant demurs upon the Count, and it is adjudge against the Plaintiff upon the Count, upon the Matter, a Writ shall be granted to the Defendant without making of any Title, because upon the Count the Title to the Advowson appears. D. in 28 H. 3. 24. B. 153. is cited a Judgment in 6 H. 6. D. 8. Rot. 537. Warf. Comp. Inc. Svo. 519. cap. 27. cites S. C. — Ibid. 524. cap. 27. cites S. C.

11. In a Qua. Imp. if the Defendant makes Default at the grand Distreis, the Plaintiff ought to make Title to the Advowson. D. 7 El. 241. 48. to have. See (Y. d) pl. 6. and the Notes there. F. N. B. 38. (N) — If

the Defendant comes out at the Distreis returned in Quare Impedit, the Plaintiff shall have Writ to the Bishop without Title made, and this by the Statute; Q151 Nota. Br. Brief al Eveſque. pl. 2. cites 33 H. 6. 1. — But Hob. 163 in Case of *Coit & Gloder v. the Bishop of Coventry &c.* says, That in a Quare Impedit both Plaintiff and Defendants are Actors one against the other, and therefore the Defendant shall have a Writ to the Bishop as well as the Plaintiff, but not without a Title appearing to the Court; and therefore if the Defendant never appears, yet the Plaintiff must make out a Title for Form's sake, and so must the Defendant if the Plaintiff be Nonfuit.

12. He who pleads to the Writ in Quare Impedit, and does not make Title, shall not have Writ to the Bishop; Quod Curia Concessit. Br. Quare Impedit, pl. 31. cites 43 E. 3. 24. S. P. Br. Quare Impedit, pl. 54. cites 12 H. 4. 11. per

Hill — S. P. Ibid. pl. 150. cites 10 H. 6. 4. — S. P. Br. Double, pl. 23. cites 43 E. 3. 25. — F. N. B. 38. in the new Notes there (W. W.) cites S. C.

S P. Br. Brief al Evesque, pl. 11. cites S. C.—Br. Effoign, pl. 46. cites S. C.—F. N. B 38. (L) in the new Notes there (h) cites S. C.

13. Where *Plaintiff in Quare Impedit* is *essoigned* which is adjourned, and at the Day it is found that he had Attorney in Court not *essoigned*, the Defendant shall have Writ to the Bishop. Br. Quare Impedit, pl. 58. cites 14 H. 4. 12, 13.

So in Case of the King Plaintiff, per 5 Justices, Contra per Martin and Strange J. Ibid. pl. 24. cites 11 H. 6. 3.

14. In Quare Impedit, the Sheriff returned Nihil to the Summons, Attachment and Distress; Writ to the Bishop shall issue though no Writ be served. Br. Brief al Evesque, pl. 15. cites 21 H. 6. 56.

But it is said, if the Defendant had made Title in his Bar, 15. In Quare Impedit the Plaintiff was nonsuited, and the Defendant by Advice of the Court made Title De bene esse before he could have Writ to the Bishop. Br. Brief al Evesque, pl. 2. cites 33 H. 6. 1.

and the Plaintiff after this had been Nonsuit, there the Defendant shall have Writ to the Bishop without other Title. Br. Brief al Evesque, pl. 2. cites 33 H. 6. 1.—If the Plaintiff is Nonsuited after Appearance and before Count made, yet if the Defendant will make Title to himself, he shall have Writ to the Bishop. Br. brief al Evesque, pl. 21. cites 14 E. 4. 9.

16. Quare Impedit against two, the one is *essoigned*, the Plaintiff made Default, and the other Defendant made Title, and prayed Writ to the Bishop; he shall have it. Contra it seems if he will not make Title. Br. Brief al Evesque, pl. 19. cites 38 H. 6. 14.

If Quare Impedit is brought against two, and one makes Default at the Grand Distress, and the other pleads in Bar, Writ to the Bishop shall be awarded for the Plaintiff by the Statute of Marlbridge cap. 12. without Title made; and if the Bar pleaded by the other Defendant be found for him, he also shall have Writ to the Bishop; and these two Persons being upon these two Writs admitted, instituted and inducted, shall try their Right in Assise or Trespass. Jenk. 95. pl. 85. —Watf. Comp. Inc. 8vo. 525. cap. 27. cites S. C.—Watf. Comp. Inc. 8vo. 526. cap. 27. cites S. C.—Watf. Comp. Inc. 8vo. 492. cap. 26. cites S. C.

Br. Error, pl. 136. cites S. C.

18. In Quare Impedit, the Plaintiff recovered by Default, and the Plaintiff appeared by Attorney, who had no Warrant, and after the Judgment was reversed in B. R. by Writ of Error for this Cause; by which the Defendant prayed Writ to the Bishop, and could not have it without making Title. Br. Brief al Evesque, pl. 20. cites 1 H. 7. 13.

19. If the Sheriff returns upon a Quare Impedit, Quod Querens non invenit Plegios, then the Plaintiff may find Pledges in the Common Pleas, and shall have a new Quare Impedit in the Common Pleas; and if the Sheriff return upon that Writ Tarde, and the Defendant appear, and the Plaintiff be called and appeareth not, the Defendant shall not have a Writ to the Bishop, because that no Writ is served against the Defendant. F. N. B. 38 (O)

See (X. d) (Y. d) Writ to the Bishop upon Title made. Upon what Plea.

Watf. Comp. Inc. 8vo. 521. cap. 27. cites S. C.

1. If the Defendant abates a Qua. Imp. because the Church was full of the Presentment of the Plaintiff himself before Writ purchased,

fed, he shall not have Writ to the Bishop upon Title made. 13 D.

4. 7.

2. If the Defendant abates the Writ for false Latin, he shall not have Writ to the * Bishop upon Title made. Co. 7. *Sir H. Portman*, 27 b. Contra 13 D. 4. 7.

* Fol. 388.

Br Quare Impedit, pl.

56. cites 4 H. 4. 10, 11. per Hanke — S. P. F. N. B. 38. [H]

(2) If the Plaintiff be Nonsuited * after Appearance, the Defendant shall have Writ to the Bishop upon Title made; For this is peremptory to the Plaintiff. Co. 7. *Sir Hugh Portman*, 27. b. though it be within the 6 Months.

Br. Quare

Impedit, pl.

84. cites 22

H. 6. 44, 45.

— Br. Brief

al Eveſque,

pl. 16. cites S. C. — So if the Plaintiff *discontinue* his Suit. — Rep 27. b. cites Hob 138. — * Though it be before any Count made, yet if the Defendant will make Title he shall have Writ to the Bishop. Br. Quare Impedit, pl. 136. cites 19 E. 4. 9.

3. [So] if the Plaintiff be nonsuited in a Quare Impedit, after the Defendant has pleaded in Bar, the Defendant shall have a Writ to the Bishop. 38 E. 3. 8. b.

Watf Comp.

Inc. 8vo

519. cap. 27.

cites S. C.

4. If the Plaintiff be Nonsuited in a Qua. Imp. the Defendant shall not have Writ to the Bishop without Title made. 9 D. 6. 4. b. 11 D. 6. 8. 2 D. 5. 6. per Curiam.

S. P. Arg

Litt R. 226.

in the Earl

of Pem-

brooke's Case.

— Br. Quare Impedit, pl. 84. cites 22 H. 6. 44, 45. — Br. Brief al Eveſque, pl. 16. cites S. C. — F. N. B. 38 [K]

5. So upon Nonsuit, Defendant shall not have Writ to the Bishop without Title made, tho' he cannot make Title, because one of the * Patrons is Plaintiff; Because he held in Coparcenary, so that if he should make Title it should be contrary to the Action, which shall not be hindered. 11 D. 6. 8. Asjudged.

* Orig. is

(Defendant.)

— Br. Brief al

Eveſque pl.

23. cites S. C.

and there it

is, tho' he

be one of the (Plaintiff.) Though one of the Defendants be one of the Parties; For it was brought by 2 against 2, because they *held in Coparcenary*, so that if he should make Title, it would be contrary to his Action, and yet the Opinion of the Court was as above. Br. brief al Eveſque, pl. 25. cites S. C. And Brooke says, Quare, If he may not make Title by a strange Name, and then it aids the whole Matter.

6. If at the Distress returned Defendant makes Default, the Plaintiff shall not have Writ to the Bishop without Title made. 10 D. 6. 4. b.

Put F. N. B.

38 (N) says,

That if the

Defendant

does not ap-

pear at the Distress returned against him, the Plaintiff shall have a Writ to the Bishop, without making Title — But Ibid in the New Notes (b) says, That if *he appears* at the Grand Distress, and after makes Default, a Distress shall issue, and then a Writ to the Bishop. 13 E. 3. Brief al Eveſque 19. and altho' *Nihil* be returned on every Part of the Process, viz. on the Summons, Attachment, and Distress, yet the Plaintiff shall have Writ to the Bishop. 12 H. 4. 4. 21 H. 6. 56. 11 H. 6. 3.

In Quare Impedit the Defendant pleaded to Issue, and after made Default, and a Writ was awarded unto the Bishop for the Plaintiff. F. N. B. 38. (S)

If at the Distress returned against the Defendant, he comes, and has Day by the Prayer of the Parties and afterwards makes Default; The Plaintiff shall not have a Writ to the Bishop, but a new Distress. F. N. B. 38. (T) — Note, The Defendant come at the Grand Distress, and pleaded to the Inquest. Contra, where he comes not at the Pone per Vadios &c. F. N. B. 38. (T), in the New Notes there (c) cites 16 E. 3. Brief al Eveſque 18. See 8 E. 2. Quare Impedit, 163. 16 E. 3. pl. 17. 13 E. 3. pl. 19. Brief al Eveſque 19. See 2 H. 4. 1. accordant to the Diversity.

He that will have Writ to the Bishop for Default shall make Title. And nota, that the Plaintiff cannot release his Damages in Quare Impedit before they are taxed; but it was recorded that the Plaintiff could not have Damages, and upon this he had Writ to the Bishop. Br. Brief al Eveſque pl. 32. cites S. C.

7. If 3 bring Qua. Imp. and after 2 of them are nonsuited, yet the Defendant shall not have any Writ to the Bishop; For peradventure the 3d has the Right. 12. R. 2. Brief al Eveſque. 16.

Watf Comp.

Inc. 8vo

520. cap. 27.

cites S. C.

S. JF

Warr. Comp. Inc. S. o. 520. cap. 27. cites S. C. — 8 If a Man brings 2 Writs of Qua. Imp. and after is nonsuited in one, yet the Defendant shall not have any Writ to the Bishop upon this too he makes Title, 12 R. 2 Brief al Eveſque 16.

9. Quare Impedit by the King against the Prioreſs of D. and A. B. the King made Title by Voidance during the Temporalities in his Hands; The Prioreſs ſaid, That Ne voida pas Tempore Vacationis, Priſt; and the other e contra, and A. B. ſaid, That he is in as Parſon Imparſonée of the Preſentment of the ſaid Prioreſs; Judgment, if Writ lies againſt him, by which the King ſhall have Writ to the Biſhop againſt him, and Ceſſet Executio quoutque the Iſſue be tried between the others. Br. Brief al Eveſque. pl. 31. 24 E. 3. 34.

But where the Incumbent ſays, That the King has another Quare Impedit againſt the ſame Plaintiff of this Voidance, and prays Writ to the Biſhop, that he may be admitted notwithstanding Reclamation of the Plaintiff, this ſhall not be granted; For the Plea of the Incumbent is not to have Writ to the Biſhop but only to excuse himſelf of the Tort. Brooke ſays, And ſo ſee to what Purpoſe the Plea of the Incumbent is which is given to him by the Statute, and who ſhall have Writ to the Biſhop. Br. Quare Impedit. pl. 59. cites 14 H. 4. 15, 16.

If the Defendant pleads to the 12. Where the Defendant pleads an *inſufficient Plea*, the Plaintiff ſhall have Writ to the Biſhop, Br. Brief al Eveſque. pl. 1. cites 9 H. 6. 16.

Writ in Quare Impedit, he ought to make Title; For otherwiſe he ſhall not have Writ to the Biſhop. per tot. Cur. quod nota. Br. Brief al Eveſque. pl. 3. cites 43 E. 3. 25

(Z. d) What ſhall be ſaid a ſufficient Title.

Warr. Comp. Inc. S. v. o. 520. cap. 27. cites S. C. — 1. **I**N Quare Impedit againſt 2, one pleads that he does not claim ac. but conveys a Title to the King, who preſented him, and the other makes Title. If the Plaintiff be afterwards nonsuited, the Preſentee ſhall not have a Writ to the Biſhop; For what he pleads was but in Excule of the Tort, and not to have Writ to the Biſhop, but the other ſhall have the Writ. 14 H. 4. 16.

F. N. B. 58. (j) cites S. C. — Br. Brief al Eveſque, pl. 23. cites S. C. — 2. In a Quare Impedit againſt the Biſhop and others, if the others make Default, and the Biſhop appears, tho' the Plaintiff ſhall not have Writ to the Biſhop againſt the others, who make Default without Title, yet if he counts againſt the Biſhop, this ſhall be a ſufficient Title againſt the others. 10 H. 6. 5.

The Plaintiff cannot have Writ to the Biſhop without making Title, but the Title in the Declaration is ſufficient. Br. Quare Impedit, pl. 150 cites 10 H. 6. 4.

(A. e) Writ to the Bishop. *Upon what Plea it shall be granted.*

1. **IN Quare Impedit**, if the Defendant saith, That Ne Disturba pas, the Defendant shall have Writ to the Bishop. 17 E. 1. Watf. Comp. Inc. Svo. 521. cap. 27. cites S. C. — S. P. Br.
3. 71.

Brief al Eveſque. pl. 14. cites 21 H. 6. 49. — pl. 22. cites 21 E. 4. 65. — S. P. Where the King was Plaintiff. Br. Quare Impedit, pl. 48. cites - H. 4. 32. And Brooke ſays, That ſo it ſeems that this Plea will only ſave the Defendant his Damages. — S. P. Br. Brief al Eveſque pl. 4. cites S. C. — Some held, that tho' the Patron pleads this Plea of Ne Diſturba pas, yet this ſhall not conclude the Biſhop, but that he ſhall ſay, that he preſented, and his Title was found by Jure Patronatus, and he preſented his Clerk. Br. Quare Impedit, pl. 80. cites 21 H. 6. 44.

In Quare Impedit, the Plaintiff made Title by the Iſſue of the youngeſt Daughter, the Defendant made Title as Tenant by the Curteſy by Marriage of the eldeſt Daughter; To which the Plaintiff ſaid, That Ne Diſturba pas, by which the Defendant had writ to the Biſhop, in as much as the Plaintiff relinquished his Title. Br. Brief al Eveſque, pl. 29. cites 5 H. 5. 10. — Br. Quare Impedit, pl. 62. cites S. C.

Ne Diſturba pas, is, in Effect, the General Iſſue in a Quare Impedit, and every Defendant may plead it without more; Becauſe it is only a Defence of the Wrong with which he ſtands charged, and leaves the Plaintiffs Title not controverted, but in Effect confeſſed, and therefore upon that Plea the Plaintiff may preſently pray a Writ to the biſhop, or (at his Choice) maintain the Diſturbance for Damages. Hob. 102. in the Caſe of Colt and Glover v. Biſhop of Coventry and Litchfield.

2. **In a Quare Impedit**, if the Defendant ſaith, that pending the Writ the Preſentee of the Plaintiff is admitted, inſtituted, and inducted by the Biſhop, the Plaintiff ſhall have a Writ to the Biſhop, Becauſe he does not deny the Diſturbance, nor the Right of the Patron. 11 R. 2. Quare Impedit 144. Adjudged. Watf. Comp. Inc. Svo. 521. cap. 27. cites S. C. —

3. **In Quare Impedit againſt the Ordinary and others**, if the Ordinary ſaith that he claims nothing but as Ordinary, the Plaintiff ſhall have Judgment againſt the Ordinary preſently, to have Writ to the Biſhop, but Ceſſet Executio &c. 17 D. 7 Reil. 43. Watf. Comp. Inc. Svo. 524. cap. 27. cites S. C. — Upon ſuch Plea of the

Ordinary, the Plaintiff ſhall recover this Preſentment, per Paſton; But per Markham he ſhall not have Writ to the Biſhop; For the Preſentation to the Ordinary ſhall be Seſſion to the Party; Quod Curia conceſſit. Br. Quare Impedit, pl. 80. cites 22 H. 6. 28, 29.

4. **Quare Impedit by the Queen**, and Counted that the Manor to which &c. was held of one S. in her Ward, and intitled herſelf as by Ward for Cauſe of Ward; the Defendant ſaid that the Anceſtor of the Infant held of N. who held over of S. Abſque hoc, that he held of S. immediately, and a good Plea; For there the Queen had Title. Br. Quare Impedit, pl. 96. cites 24 E. 3. 54. — And the ſame Year, fol. 75. it was found for the Plaintiff, and Damages &c. and that the Church was full, and this ſeems to be by Lapse, and the Plaintiff reſuſed the Damages, and prayed only Writ to the Biſhop, and had it as his Peril without Damages, and this was to have Advantage to ouſt the Incumbent. Br. Quare Impedit, pl. 96. cites 24 E. 3. 54.

5. **Quare Impedit by the Prior againſt the Biſhop of C. and others**, one pleaded Grant de Proxima Advocacione to J. N. by the Prior and Convent, who granted it to the Defendant, and ſo it belonged to him to preſent, and prayed Writ to the Biſhop, and after Writ to the Biſhop was awarded for him who had the Grant. Br. Quare Impedit. pl. 49. cites 7 H. 4. 34. 36.

6. **Between Common Perſons**, the Defendant may traverse the Title of the Plaintiff, without intitling of himſelf, but then he ſhall not have Writ to the Biſhop. Br. Quare Impedit. pl. 138. cites 21 E. 4. 1. 3.

(B. e) Writ to the Bishop. *In what Cases it shall be granted.*

Fol. 389.

See Rege
inconsulto
(E) pl. 2.

Watf. Comp.
Inc. Svo.
509, 510.
cap. 26. cites
S. C.

Where the
Defendant
claims the
Advowson as
Parson imparsonnee, although it be found for the Defendant, he shall not have a Writ to the Bishop. F. N. B. 38. (L)

Watf. Comp.
Inc. Svo.
510. cap. 26.
cites S. C.

Watf. Comp.
Inc. Svo.
510 cap. 26.
cites S. C.
So if the
Plaintiff in
Quare Impe-
dit be Non-
appeared after
Appearance,
the Defendant shall make Title, and have Writ to the Bishop, though it be before Count; and so see that it is peremptory. Br. Nonfuit, pl 62. cites 19 E. 4. 9. and 33 H. 6. 1.

1. **I**N a Quare Imp. against Patron and Incumbent, if the Incumbent pleads that he is Parson imparsonnee, as that he is present-
ed instituted and inducted, and pleads a good Bar, and the Patron
also pleads his Title, but does not acknowledge any Plenarty of the
Presentee, and Judgment is given against the Plaintiff, the
Patron shall have a Writ to the Bishop; For the same Plea of the
Incumbent shall not conclude the Patron, because the Patron could
not contradict the Plea of the Incumbent in this Point. Hobart's
Reports 262. Puleston's Case.

2. If a Quare Impedit be brought against the Incumbent of the
King, and he pleads that he is Parson imparsonnee and pleads a good
Bar against the Plaintiff, shewing Title to the King to present by rea-
son of Simony, upon which the Plaintiff demurs, and it is adjudged
against him. Though in this Case the Defendant has pleaded that
he is instituted and inducted, yet the King may suggest to the Court,
that he is not instituted and inducted, contrary to the Plea of his Presen-
tee, because Title appears for the King who is a 30. Person always
present in Court, and shall not be bound by the Plea of his Presen-
tee, and upon this Suggestion entered he shall have a Writ to the
Bishop. 9. 15 Ja. B. between Benedict and Winchcomb, and Puleston,
adjudged per Curiam, except Hutton, who seemed e contra. Ho-
bart's Reports 261. same Case.

3. But it seems, that without this Suggestion the King shall not
have any Writ to the Bishop. 9. 15 Ja. B. In the said Case the
Court was divided.

4. In Quare Impedit the Plaintiff shall recover, and shall have a Writ
to the Bishop, and Damages upon the Default of the Defendant after Ap-
pearance; Quære if it had been after a Continuance. Br. Damages, pl.
192. cites 2 H. 4. 1.

5. The King shall have Writ to the Bishop, though it be before Count; and so see that it is peremptory. Br. Nonfuit, pl 62. cites 19 E. 4. 9. and 33 H. 6. 1.

5. The King shall have Writ to a Bishop to induct one into a Prebend
which the King has given unto him, and to give him a Seat in the
Quire, and a Place in the Chapter-House. F. N. B. 34. (D)

6. And a Man shall have a Quare Impedit of an Hermitage, and a
Writ to put him into corporal Possession. F. N. B. 34. (E)

7. F. N. B. 38. (C) the Note in the Marg. says, That if in a Quare
Impedit the Defendant disclaims, there the Plaintiff shall have a Writ
to the Bishop; Contra in Disclaimer in a Writ of Right of Advowson. 6 E.

3. 7. Error 78. The Reason is, because he cannot remove his Clerk af-
ter the 6 Months past.

8. At the Distress returned against two, one appears, and the other makes
Default, the Plaintiff shall have a Writ to the Bishop against him who
made Default, and yet it may be that the other Defendant may bar the
Plaintiff; and it is so used at this Day; but the contrary was adjudged.
H. 7. E. 3. for the Cause before said. F. N. B. 39. (B)

Ibid. in the
new Notes
(c) says, See
Accordant
13 E. 3.
Brief al E-
velque 21.

Lib. Entry Quare Impedit in Judgment 4, fol. 50. But a Cesset Executio quoad Breve &c quousque.
Vide contra E. 3. 4 (expressly) in a Writ against the Bishop and others. Where the Bishop disclaims,
the Plaintiff shall have a Writ to the Bishop; Sed cesset Executio quousque Placitum &c See 17 E. 3.
Brief al Evelque 58. If the King brings a Quare Impedit against B and another Quare Impedit against
B.

B. and C. and B. comes in, & non potest dedicere, the 1st. Writ to the Bishop shall proceed for the King notwithstanding ; for it is an Original.

9. Upon a *Recovery within 6 Months against the Incumbent in Quare Impedit* the Recoveror may present his Clerk to the Bishop *without any Writ to the Bishop* ; Per Coke, Doderidge and Haughton. Roll. R. 213. Trin. 13 Jac. Harris v. Autin

Plaintiff recovered in Quare Impedit after the 6 Months, but it was

found, that the Church was full of the Collation of the Metropolitan, it was doubted if in this Case the Plaintiff should have a Writ to the Bishop ; for the Court cannot adjudge whether the Metropolitan has done wrong or not, but this shall come in Trial in Quare non admittit. Br. Quare Impedit, pl. 53. cites 11 H. 4 So — If a Man recovers an *Advowson*, and the 6 Months pass, yet if the Church is void, the Patron may pray a Writ unto the Bishop, and shall have it ; and if the Church be void when the Writ comes to the Bishop, the Bishop is bound to admit his Clerk. F. N. B. 38. (F) — Where the Plaintiff recovers by Verdict in a Quare Impedit, and it is found by the same Verdict, that the 6 Months are past, and that the Metropolitan has presented, whereas the Ordinary ought to have presented &c. and that the Year is now past &c. yet the Plaintiff shall have a Writ to the Bishop. F. N. B. 38. (P) cites 38 E. 3. 12.

10. In a *Quare Impedit against A. and B. and the Bishop B. made Title, and the Bishop pleaded that he claimed nothing but as Ordinary. The Bishop died ; A. suggested this on the Roll, and prayed that the Plaintiff might reply ; and for want of a Replication, the Entry was made Quod prædict. Querens licet Solemniter exactus non venit nec est proventus Breve suum, ideo Consideratum est &c. Et Breve Episcopo. Upon this a Writ of Error was brought, and the Judgment was affirmed ; because it is a Nonsuit after Appearance, which in a Quare Impedit is peremptory. 2 Salk. 559. Mich. 3 W. & M. B. R. Rot. 569. Berkeley v. Hamard.*

(C. e) Writ to the Bishop. To whom it may be granted, See Trial (U) 11. 16, 17.
[or awarded.]

1. If in a *Quare Impedit against the Bishop and others the Bishop be found a Disturber, the Writ ought to be granted to the Metropolitan upon Prayer of the Recoveror. Time of E. 1. 83. Put for a Rule, Contra 30.* Watf. Comp. Inc. Svo. 546. cap. 28. cites S. C.

2. In *Qua. Imp. against the Incumbent and Ordinary, if the Incumbent claims in by the Ordinary by Lapse, and a Writ awarded against him as a Disturber, though the Ordinary says, That he claims nothing but as Ordinary by Lapse, yet upon Prayer of the Plaintiff the Writ shall be awarded to the Metropolitan. 19 E. 3. Quare Impedit 153. 5 H. 7. 22. Quare. 8 H. 4. 22. b.* Watf. Comp. Inc. Svo. 546. cap. 28. cites S. C. — Error was assigned in Quare Impedit

brought against the Bishop of W. and 3 others ; the Bishop pleaded that he claimed nothing but *Induction as Ordinary*, Judgment if, without special Disturbance alleged, this Action against him ought he to maintain ; and thereupon Writ was awarded to the Metropolitan, and the other Pleaded in Law ; upon which the Plaintiff took Issue, which is found for him, and that the Church was full of the Collation of the Bishop *Intra tempus semipre*, and Writ awarded to the Metropolitan against them ; and it was affirmed per Fore, because the Writ was awarded to the Metropolitan where no Default was in the Bishop. A. was assigned for Error, that they inquired if the Church was full of the Collation of the Bishop &c. and awarded Writ to the Metropolitan where the Bishop was out of Court by the first Judgment ; and per Garroway, it is not Error ; For the Bishop remains Party after the Writ awarded as Capra &c. the Plaintiff may assign special Disturbance, and Process shall be continued against him ; and if Disturbance be found, the Plaintiff shall recover Damages against him ; but Hill and Norton say, that it was Error, Et Ad Journatur. Br. Briefal Eveque, pl. 6. cites 8 H. 4. 22.

3. In a *Qua. Imp. against Patron and Ordinary, if the Bishop claims nothing but as Ordinary, whereupon Judgment is given against him with a Cesset Executio, and after Judgment is also given against the* Watf. Comp. Inc. Svo. 546. cap. 28. cites S. C.

—So in the Patron, and a Writ to the Bishop granted against him, this may be directed to the same Ordinary, though he be Party to the Writ; because he is not found a Disturber. Co. 6. Bofwell 49. New Entries 494. to the Guardian of the Spiritualities of the same Ordinary.

was assigned, the Plaintiff made Default, and the other Defendant made Title, and proved Writ to the same Bishop, upon the Default of the Plaintiff, and had it; Quod Nota, after the Title made, and not before. Br. Quare Impedit, pl. 110. cites 38 H. 6. 14.

Watf. Comp. Inc. Svo. 545 cap. 28. cites S. C. 4. And in the said Case the Writ to the Bishop may be awarded to the Metropolitan, because the Ordinary is Party to the Writ. 8 H. 4. 22. b. Adjudged in B. and this assigned for Error in Writ of Error; But there it was found that the Bishop had collated by Lapse to the Church. Contra 5 H. 7. 22. But Quare.

Fol. 390. 5. In a Qua. Imp. for a Church within the Jurisdiction of York, if the Writ to the Bishop be awarded to the Archbishop of Canterbury, this is not void, but only erroneous. Tr. 3 Ja. B. per Curiam.

Watf. Comp. Inc. Svo. 549. cap. 28. cites S. C.

Watf. Comp. Inc. Svo. 547. cap. 28. cites S. C. 6. In a Quare Impedit, if the Archbishop of York be found a Disturber, the Writ shall be awarded to the Archbishop of Canterbury. Tr. 3 Ja. B. said to be the usual Course. D. 16. El. 327. 7. Adjudged. Coke's Entries 496. c. a.

S. P. F. N. B. 28 in the New Notes there (M. H.) cites D. 327, 328 & D. 76, 77 19 E. 3. Quare Impedit 153.

Tho' he was not Party to the first Writ. Nov 148. S. C. — 7. If a Quare Impedit be brought against Patron Incumbent, and the Archbishop of Canterbury, Guardian of the Spiritualities of Chichester, Sede Vacante of the Bishop, and after a Bishop is created, and after Judgment upon Non sum Informatus is given for Plaintiff the Writ shall be awarded to the Bishop of Chichester, because he is Immediate Ordinary and Officer to the Court. B. 5. Ja. B. per Thomas Pelham, per Curiam.

Watf. Comp. Inc. Svo. 543. cap. 28. cites S. C. —

In a Quare Impedit the Plaintiff recovered, and had a Writ to admit his Clerk, directed to the Dean and Chapter, Guardian of the Spiritualities, Sede Vacante of the Bishoprick, which is not returnable, and before the Writ was executed a Bishop was created; It was doubted whether the Authority to execute the Writ be ceased in the Dean and Chapter (Guardians of the Spiritualities) And it seemed, That upon a Suggestion made to the Court, Eo quod nihil Actum fuit in Breve Predicto, Another Writ might be awarded to the Bishop, and may be made returnable, if the Party please. D. 350. pl. 19 Pasch. 18. Eliz. Anon. — Watf. Comp. Inc. Svo. 548. cap. 28. cites S. C.

Watf. Comp. Inc. Svo. 548. cap. 28. cites S. C. — 8. When the Inferior Ordinary is found a Disturber Sede Vacante of the Archbishoprick, the Writ shall be awarded to the Guardian of the Spiritualities of the Archbishoprick. Time of E. 1. 83. Put for a Rule.

—Br. Quare Impedit, pl. 49. cites 7 H. 4. 34. 36. per Hails.

S. P. Norto to the Bishop's Vicar, if the Bishop be out of the Realm; but in that Case he has a Sicut Alias to the Metropolitan: And yet the Bishop was never found a Disturber. F. N. B. 38 (Q) in the New Notes there (d) cites S. C. — Watf. Comp. Inc. Svo. 546. cap. 28. cites S. C.

9. In Quare Impedit if the Plaintiff recovers, and has Writ to the Metropolitan, there he cannot have Writ to the Bishop after; per Thorp. Br. Briefal Evesque, pl. 12. cites 38 E. 3. 12. 22.

Br. Process, pl. 50 cites S. C. — 10. The Metropolitan had certified, That it is out of his Jurisdiction, and that the Bishop is out of the Realm, and has made a Vicar his Lieutenant to

do all Things for him, and prayed Writ to him. Per Thorp, we are not apprised, whether he has made such Lieutenant, and till we are certified that he has done so, we will not write to any but to him who is immediate Officer, which is the Bishop. Br. Brief al Evesque, pl. 12. cites 38 E. 3. 12. 22. F. N. B. 33 (Q) in the New Notes there (d) cites S. C. Watt. Comp. Inc. 8vo, 546. cap. 28. cites S. C.

11. Quare Impedit lies in Durham, and Writ shall be awarded to the Bishop there; contrary in Wales, Guernsey, and the like. Br. Quare Impedit, pl. 152. cites 11 H. 6. 3. per Danby and Marten.

12. If a Man recovers his Presentation in C. B. against the Bishop, then he may have a Writ to the same Bishop to admit his Clerk, or to the Metropolitan. F. N. B. 38 (B) S. P. or to the Vicar General, if the Bishop be out of the

Realm. F. N. B. 38 (Q) — Ibid. in the New Notes (d) says, see 16 E. 3. Quare non admittit. 3. — F. N. B. 38. (B) the Note in the Margin, cites H. 8. 32. S. H. 4. 22. — A Writ shall issue to the Metropolitan, if the Bishop be Party; Quare, for the Bishop did disclaim as Patron in S. H. 4. F. N. B. 38. (B) the Note in the Margin.

13. Quare Impedit was brought against the Archbishop, the Bishop, and 3 Defendants; The Archbishop pleaded, That he claimed nothing but as Metropolitan; The Bishop pleaded, That he claimed nothing but as Ordinary; The Defendants made a Title; Judgment was given for the Plaintiff; It was, among other Things, assigned for Error, That the Writ was awarded to the Archbishop, where it should have been to the Bishop. All the Court agreed, That all the Books are, That he may have his Writ to the one or the other, where the Ordinary is a Disturber. And Coke Ch. J. said, He had always observed this, If he be Party to the Suit or not, it is in the Party's Election to have his Writ to the Bishop, or the Metropolitan. 3 Bullf. 174. Pasch 14 Jac. Grange v. Dennis. Roll. Rep. 363. 397. S. C. — Jenk. 324. pl. 36. S. C. & P. — Watt Comp. Inc. 8vo. 545 cap. 28. cites S. C.

(C. c. 2) Writ to the Bishop. Proceedings, Pleadings &c.

1. **I**N Quare Impedit against the Bishop, the Plaintiff recovered, and had Writ to the Bishop to disincumber the Church, viz. Distringas Episcopum; [the Sheriff] returned in Issues 20 s. and [the Plaintiff] prayed another Distress, and had it. Br. Quare Impedit, pl. 72. cites 21 E. 3. 30.

2. If the Sheriff returns Nihil at the Summons in Quare Impedit, and the like at the Attachment, and the like at the Distress, yet Writ to the Bishop shall be awarded. Br. Quare Impedit, pl. 81. cites 21 H. 6. per Arden, & P. 15. E. 3. by him.

3. The Plaintiff had Writ to the Bishop, which was returned Not served, & Alias & pluries awarded. Br. Quare Impedit, pl. 123. cites 5 E. 4. 115. S. P. And there shall be an Attachment against the

Bishop, if Need be, F. N. B. 38 (C) — Note on this Writ there lies an Alias, Pluries & Attachment, and thereon the Parties shall plead as in a Non Admittit. (F) (N) 38. (E) in the New Notes there (a)

4. If the King recovers in C. B. any Prebend, or Sub-deanery, or Dignity against the Bishop, and gives the same by his Letters Patents to another Clerk, The Clerk shall shew the Letters Patent in C. B. and thereupon shall have a Writ unto the Bishop to admit him, and to induct him; And if the Clerk dies before he is admitted and inducted, and the King gives the same by other Letters Patent unto another Clerk, that Clerk shall have a Writ

out of the Chancery, directed *unto the Justices* of C. B. *reciting* the Recovery, and how that the other Clerk died before he was admitted, and that he has now granted the same to this Clerk by his Letters Patent, *commanding the Justices, That they send another Writ* to the Bishop, that he admit his Clerk, notwithstanding the King's Collation before made to the other Clerk. F. N. B. 38 (D)

5. Note; This *Writ* is expressly judicial, and therefore *shall issue out of the Place where the Record is*. If Judgment be given at the Nisi Prius the Justices of Nisi Prius shall award the Writ to the Bishop (yet it seems the Writ is not returnable) And when it appears that the Record is sent into C. B. it shall issue from thence. F. N. B. 38. in the New Notes there (M. H) cites Dyer 194.

6. Where Judgment is given in C. B. in a Quare Impedit, and a *Writ of Error* is brought, the Court of C. B. may award a Superfeudas to the Writ, which had been awarded there to the Bishop, before the Writ, was delivered, and the King's Bench may award the like. Jenk. 206. pl. 36.

Sec (A. b 2.)
pl. 5.

(D. e) Writ to the Bishop. Return by the Bishop.

The Bishop is not estopped to make such Return, inasmuch as he is not privy to the Verdict, or any Plea that confesses the Plenarty of the Church; But if the Matter which he returns for his Excuse of not serving 2 Writs be false, the Plaintiff may have his Quare Non Admisit, and also Scire facias against the first and New Incumbent, to have Execution accordingly, D. 260 a. pl. 21. Pasch. 9 Eliz. Basset's —Watl Comp. Inc. 8vo 555. cap. 28. cites S. C. And the Doctor says he supposes that in this Case the first Clerk was not inducted, and so the Church remained open to the King's Presentee, else his Institution &c. must be void.

1. **U**PON a Writ to the Bishop, for the Plaintiff awarded in a Suit of Quare Impedit between Common Persons, if the Ordinary returns, that pending the Quare Impedit, and before Judgment it was found by Commission of Melius Inquirendum, that the said Adowson, with other Lands of the Plaintiff, which were held of the Queen in Capite, descended to the Plaintiff from his Father, and that the Plaintiff was, and yet is within Age and the Lands seised into the Hands of the Queen, by which the Queen presented to him one B. Clerk, the Church being then void, and for 3 Months before the Delivery of the Writ to him, whom he admitted &c. and so the Church is now full, whereby he cannot execute this Writ, D. 9. El. 260. 21. by the better Opinion of the Court, the Ordinary is not estopped to make this Return of the Title of the Queen, and the Plenarty of the Church of his Incumbent by any thing contained in the Record.

And the Plaintiff was not permitted to relinquish the Scire facias, and tender Averment against the Bishop That he did not resign; for the Bishop is only an Officer to the Court, and has made his Return, and has no Day in Court; but he may have his Quare non Admisit against the Bishop. Ibid.

2. A Man had Proximam Præsentationem by Grant; the Church voided, a Stranger presented, and the Grantee brought Quare Impedit, and recovered, and had Writ to the Bishop, who returned that the Presentee of the Disturber resign'd, and another is in; and upon this the Plaintiff had Scire facias to have Execution, notwithstanding that it be a second Avoidance now, because he recovered the first Avoidance, and the Covin of the Defendant shall not prejudice the Plaintiff. Br. Presentation, pl. 33. cites 21 H 7. 8.

Goldsb. 3.
pl. 7. and
24. pl 4
S. C. —

3. In Quare Impedit it was found for the Plaintiff, and a Writ issued to the Bishop, which was not return'd; upon an Alias brought, the Bishop returned that after Judgment given in the Quare Impedit, the same Incumbent

bent, against whom the Action was brought, was Presented, Instituted and Inducted into the same Church; and so the Church is full. The Question was if this was a good Return, and it was often debated. It was adjudg'd that the Return of the Bishop was not good, and he was fin'd 10 l. and a *Sicut alias* awarded, upon Pain of 100 l. 3 Le. 138. pl. 188. Mich. 28 Eliz. Moor v. Bishop of Norwich.

Watf. Comp. Inc. Svo. 550. cap. 28. cites S. C.

4. In Quare Impedit Judgment was given for the Plaintiff, who was presented to a Church void by Simony; whereupon a Writ was awarded to the Bishop of Winchester, who returned, *That before the Writ received, viz. Such a Day* (which was after the Judgment) *the Church was full by Presentation out of the Court of Wards, because a Livery was not sued.* It was said these Returns of the Church being full before the Receipt of the Writs, are always rul'd to be insufficient; for the Bishop ought to execute the Writ when it comes to him; and cites 9 Eliz. Dyer [160. pl. 2. Balfet's Case] and 18 E. 4. 7. but says the Difference here is that the King presented. And Harvey J. being only present, agreed that the Judgment ought to be executed. Whereupon it was agreed, that the Bishop should have Day to *amend his Return*, not that a new Writ should be taken. Het. 130. Mich. 4 Car. C. B. Sir John Hall's Case. And it being mov'd again in the Term following, it was held by Yelverton and Richardson, that the Bishop ought to obey the King's Writ. Het. 131. S. C.

Watf. Comp. Inc. Svo. 550. cap. 28. cites S. C.

5. If a *common Person* recovers, and has a Writ to the Bishop, and the Ordinary returns that it is full before of his own Presentation, it is good; As if one recovers, he may enter, if he will, without a Writ of Execution to the Sheriff. Het. 130. in Sir John Hall's Case.

(E. e) Writ to the Bishop to Remove. *Who shall be Removed. [In what Cases by Judgment without Writ.]*

1. If a Man recovers against the Patron, leaving out the Incumbent, **he shall not oust the Incumbent, because he was not Party to the Suit; for he shall not be ousted without Answer.** * 9 H. 6. 56. b. Dub. † 19 H. 6. 68. b.

S. P. 6 Rep. 51. b. in Boswell's Case. S. P. Cro. J. 93. in Case

of Lancaster v. Lowe.—S. P. Jenk. 281. pl. 7. says it was agreed by the Justices of both Benches—S. P. Jenk. 234. pl. 36.—Incumbent that it is a *Stranger*, shall not be ousted by Writ to the Bishop without *Scire facias*. Sid. 93. Hall v. Broad.—S. P. Br. Quare Impedit, pl. 49. cites H. 4. 34. 36. Per Huls, And if the Incumbent be ousted, he shall recover by the *Spiritual Law*.—* Br. Ibid. pl. 6. cites S. C.—† Br. Quare Impedit, pl. 79. cites S. C. and P.

Brooke says, that it seems that where one recovers in *Quare Impedit* against the Patron alone, without naming the Incumbent, that this Recovery will hold him in Possession, tho' the Incumbent shall not be removed, because he recovers the Presentation; quod sufficit. Br. Quare Impedit, pl. 39. cites 47 E. 3. 4.

2. But if a Man recovers against the Patron, **he shall oust the Incumbent** presented by the same Patron pending the Writ, **because the Recoveror could not name him in the Writ.** 19 H. 6. 68. b. Co. 6. Boswell 51. b.

Br. Quare Impedit, pl. 79. cites S. C.—S. P. Jenk. 281. pl. 7. says it

was agreed by the Justices of both Benches—S. P. Jenk. 234. pl. 36.—2 Inst. 257.—Contra per Twidlen J. who said, and it was not denied by any, that a Writ shall not go without a *Scire facias* against the Incumbent; for *Res inter alios acta alteri Nocere non debet*, and to strip one of his Possession without Action would be inconvenient; for he has no Day in Court, and it would encourage vexatious Actions; and he said that Boswell's Case had been often denied; and he knew that Writ of Error was brought to reverse it, and Error in Law assigned, but the Writ abated; and Lord Coke in the End of the Case seems to confute the principal Judgment. Sid. 93, 94. in Case of Hall v. Broad.—Watf. Comp. Inc. Svo. 555. cap. 28.

If the Incumbent be presented by the Defendant Pendente Breui, he shall be removed, but not if he be presented by a Stranger, without *Scire facias*. Cro. J. 94 Mich. 3 Jac. in Case of Lancaster v. Lowe.

3. If a Stranger usurps by Presentment pending the Writ of Quare Impedit, his Clerk shall be removed by the Judgment in the Quare Impedit.

4. So if the King presents without Title, pending a Quare Impedit against another Disturber, and the Clerk of the King is Instituted and Inducted, yet he shall be removed by Judgment in the Quare Impedit, Co. 6. *Boswell* 51. Resolved.

Pol 391.

Watf. Comp. Inc. Svo. 533. cap. 28 cites S. C.

Cro. F. 44, 45. S. C.

by Name of

Feverley v.

Cornwall —

Golishb 103 to 105. pl.

9. S. C. —

Ard. 100. pl. 215. S. C.

Watf. Comp. Inc. Svo. 533. cap. 28. cites S. C.

5. So the King presents to my Church, and the Clerk is Instituted, whereupon I bring Quare Impedit against the Incumbent only (as I ought) and pending this the King presents another Clerk (the first not being Inducted) who is Inducted, yet this Clerk shall be removed by the Judgment in the Quare Impedit. Co. 6. *Boswell* 51.

6. If pending a pending a Quare Impedit against J. S. the Plaintiff be Outlaw'd, by which the King presents, and his Clerk instituted and inducted, and after the Outlawry is revers'd, and the Plaintiff recovers in the Quare Impedit, he shall remove the Incumbent of the King; for now by the Reversal of the Outlawry the Presentment of the King was without Title. 30 El. B. R. *Cornwall's Case*. Adjudged. cited B. 3 Ja. B. R.

Watf. Comp. Inc. Svo. 531. cap. 28.

Mo. 5-1. pl. 784. S. C.

Adjudged accordingly.

In this Case

Anderson and Windham Serjeants of the Queen, Serjeant Barber, Gerard Attorney General, and Bromley Solicitor were of Opinion, that he is not removeable by this Judgment, because he was not Party nor privy thereto, nor to the Writ; but Lord Dyer says it seems that this Opinion is not Law, tho' there were 20 Incumbents successively, Pendente lite &c. D. 364 pl. 28 — S. C. Cited by Coke, who said that he had known it to be adjudged according to the Opinion of Dyer. Roll. R. 213. Trin. 13 Jac. B. R. in Case of Harris v. Austen.

Quare Impedit against Parson, Patron and Ordinary, and pending Quare Impedit the Parson resign'd, and the Ordinary gave Notice to the Patron, and afterwards the Ordinary by Lapse presented the same Incumbent that resign'd; and afterwards the Plaintiff had Judgment; it was held that because the same Incumbent is in by a new Title, viz. by Lapse, and the same Person against whom the Recovery was had, and that appeared to the Court, he should be removed. Per Windham. 3 Le. 138. pl. 188. in the Case of Moor v. Bishop of Norwich, cites Lo. 5. E. 4. 115. 116. and refers to 9 Eliz. D. 265. & 21 Eliz. D. 364. — Watf. Comp. Inc. Svo. 531. cap. 28. cites S. C. — Watf. Comp. Inc. Svo. 536. cap. 28. cites S. C.

8. If the King usurps upon me, and his Clerk is Instituted and Inducted, against whom I bring a Quare Impedit, and pending the Writ the Incumbent resigns, and the King presents another, who is also instituted and inducted, and then I recover after six Months; in this Case, upon a Writ to the Bishop for me, the last Incumbent of the King, tho' he has been in by 6 Months, shall be removed, because he comes in Pendente lite. Contra. D. 21 El. 364. 28.

9. Pending a Quare Impedit against J. S. if a Stranger presents a Stranger upon good Title, and his Clerk admitted, instituted and inducted, and after the Plaintiff recovers, yet he shall not remove this Incumbent. B. 3 Ja. B. R. *Boswell's Case*. D. 1 Ja. B. Dubitatur 18 H. 7. Kell. 49. Per Curiam, because he is a Stranger to the Recovery.

Cro. J. 93. S. C. by Name of Lancaster v. Lowe. —

Watf. Comp. Inc. Svo. 533. cap. 28. cites S. C. —

17. A. brings

A. brings Quare Impedit against B. and then the Clerk of C. who has the Right is admitted pending the Quare Impedit against B. If A. recovers, his Clerk shall be admitted also, and the Clerk of A. and of C. shall try their Right in Ejectment, Trespass or Assise. Jenk. 281. pl. 7.

10. So if the Stranger presents the same Defendant upon good Title pending the Writ, yet he shall not be removed, tho' he be adjudged a Disturber upon the first Presentment upon which the Quare Impedit is brought. B. 3 In. B. R. *Bojiwell's Case contra.* Watf Comp. Inc. Svo. 534 cap. 28. cites S. C.

11. If A. seized of a Manor, to which an Advowson is appendant, be outlaw'd in a Personal Action, and after the Church voids, and A. presents his Clerk, and the Bishop upon a Disturbance made by B. who pretends some Title thereto, refuses to admit, whereupon A. brings his Quare Impedit against the Bishop and B. and declares therein, and after the King presents B. upon the Outlawry of A. upon which Presentment B. is admitted, instituted and inducted, and after the Outlawry is revers'd, and all this appears upon Pleading; In this Case A. shall have Judgment against B. because he comes in, pending the Writ, upon a Title which is avoided also pending the Writ; and also because B. was not Incumbent at the Time of the Writ purchas'd, and so could not plead to the Title. Mich. 16 Car. B. between *Risby and Porole.* Adjudged per Curiam. Watf Comp. Inc. Svo. 533 cap. 28. cites S. C.

12. In a Quare Impedit against B. if the Plaintiff be nonsuited, whereupon B. has a Writ to the Bishop, who was not Party to the Writ of Quare Impedit, In this Case, tho' the Bishop had collated before the Writ served, yet inasmuch as he had not collated before the Judgment for the Writ to the Bishop, which was within the 6 Months, the Clerk of the Bishop shall be removed. Co. Magna Charta. 363.

13. If a Man recovers in a Quare Impedit against Patron and Incumbent within the 6 Months, he shall remove the Incumbent. 19 B. 6. 68. b.

bent is removed by the Judgment without any Removal by Writ to the Bishop. Roll. R. Case of *Harris v. Austin.*

For 392
In this Case
the Incum-
212. in the

14. So if a Man brings Quare Impedit against Patron and Incumbent within the 6 Months, and recovers after the 6 Months past, yet he shall remove the Incumbent. 39 E. 3. 15. Adjudg'd. Watf Comp. Inc. Svo. 532. cap. 28. cites S. C. —

Quare Impedit be brought after the 6 Months, the Incumbent shall not be removed. Roll R. 211. *Harris v. Austin.* But if the

15. In an Assise of Darrein Presentment or Quare Impedit against Patron and Incumbent brought after the 6 Months past, if the Defendants do not plead, scilicet, the Plenarty by 6 Months before the Action brought, but pleads other Matter in Bar, upon which Issue is join'd and a Verdict for the Plaintiff, the Incumbent shall be removed upon the Judgment upon this Verdict; because the Incumbent was Party to the Writ, and might have pleaded it, and did not do it. B. 9 Car. B. R. between the Bishop of St. David and *Lorte.* Adjudg'd in Writ of Error upon a Judgment in an Assise of Darrein Presentment in Wales; and the first Judgment affirmed, in which it was not inquired when the Church became void, but Quod tempus Semestre modo transivit, and yet for the Reason aforesaid not material to be inquir'd; and also because when the Jury found Quod tempus Semestre modo transivit and Damages to Half a Year, it shall be intended that the 6 Months passed pending the Writ, and not before the Action brought. B. 8 Car. B. Rot. 454. Cro. C. 541, 548. Court v. Bishop of St. David, Owen and Pritchard. Adjudg'd — Jo. 330, 332. Lort v the Bishop of St. David. Adjudg'd. — Watf Comp. Inc. Svo. 532. cap. 28. cites S. C.

16. If a Man brings a Quare Impedit, the Church being full of his own Presentment, and the Title is found for the Defendant, yet he shall not remove the Clerk of the Plaintiff; because he might have abated

In Quare Impedit the Plaintiff recovered, and the Church was full by

Lapse; and the Plaintiff pray'd Writ to the Bishop at his Peril, and had it, and refused the Damages of 2 Years. Br. Brief al Eveſque, pl. 18. cites 24 E. 3. 35.

the Writ, because the Church was full of the Presentment of the Plaintiff himself the Day of the Writ purchased. 19 D. 6. 68. b.

17. Where a Man recovers in Quare Impedit, and a Clerk is in by the Bishop by Lapse, there he shall not be removed; therefore it is good to name the Bishop also, as it seems, and then he shall not present by Lapse. Br. Quare Impedit, pl. 79. cites 19 H. 6. 68.

18. In Quare Impedit, if the Bishop says, That he did not present by Lapse, and claims nothing but as Ordinary, the Plaintiff may pray Judgment, and shall recover the Presentment. Per Paston. Markham said, This is true, but he shall not have Writ to the Bishop. Brook says, The Reason seems to be, inasmuch as he shall not remove the Bishop's Clerk. Br. Brief al Eveſque, pl. 14. cites 21 H. 6. 45. & 22 H. 6. 28, 29.

S. P. For Lapse shall not prejudice the King; for Nullum tempus Occurrit Regi.

19. Where Title is found for the King after the Collation by Lapse, there the Incumbent shall be removed; but not without Quare Impedit taken, as appears there. Br. Incumbent, pl. 6. cites 14 H. 7. 21, 22.

Br. Quare Impedit, pl. 91. cites 14 H. 7. 21. 15 H. 7. 6. Per Higham.

20. Where a Patronage is gained by the Presentation, Admission, and Institution of a Clerk, the Patron must be named with the Incumbent in the Quare Impedit; and if the Incumbent be not named, he shall not be removed. Jenk. 200. pl. 18. says, It was so resolv'd.

D. 353. b. pl. 20. Mich. 18 & 19 El.

S. C. That B. being under the Age of 24, and a mere Layman, took a Benefice, whereupon a Citation was sued out of the Delegates to deprive him, pending which R. W. brought Quare Impedit against the Bishop of H. and Blower, naming him Clerk, and recovered by Default at the Grand Distress, and Writ to the Metropoli-

tan to remove B. and admit the Clerk of R. W. whereupon one Griffin was admitted, instituted, and inducted. The Bishop and B. brought a Writ of Deceit in C. B. against R. W. and the Sheriff, and Summoners for Non Summons; R. W. and the Summoners appear, but not the Sheriff. The Summoners being examined, denied that there was any sufficient Summons, by reason of the Shortness of the Time and the Distance of the Place, the Benefice lying in Wales. R. W. pleaded in Bar of this Writ of Deceit, this Disability of B. and Sentence of Deprivation by the Delegates, supposing thereby that he cannot be restor'd to his first Title and Interest in the Church &c. The Bishop and B. demurr'd. And Note this was pleaded in Bar as well against the Bishop as against B. and so not good; Whereupon Judgment was given, That the first Judgment be set aside, and the Plaintiffs restor'd to all which they lost &c. For the Incumbency is not in Question, but the Disturbance of the Plaintiff in the Quare Impedit to present to the Church, which was void by the Supposal of the Writ; and the Matter of the Deprivation and Removal of B. from the Church is not in Question, by this Recovery in Quare Impedit by the Defendants, by which

21. R. W. and J. P. brought a Writ of Error against the Bishop of H. and Blower upon a Recovery had in a Writ of Deceit by the said Bishop and Blower against the said R. W. and J. P. for that the said R. W. had before brought a Quare Impedit against the said B. and the Bishop, and had recovered against them by Default, whereupon R. W. had a Writ to the Metropolitane to admit his Clerk, and in the Writ of Deceit Judgment was given for the Plaintiffs; for it was found, that the Summons was the Friday to appear the Tuesday after, and so an insufficient Summons; and in that Writ of Deceit the Defendants W. and P. pleaded, That the Incumbent was deprived of his Benefice in the Court of Audience, which Sentence was affirmed upon Appeal before the Delegates; and notwithstanding that Plea, Judgment was given against W. and P. Defendants in the said Writ of Deceit; And upon that Judgment this Writ of Error was brought, And among other Things it was assigned for Error, That upon Suggestion made after Verdict, That B. was Incumbent and in, of the Presentment of the Lord Stafford, and that he was removed, and that Griffin was in by the Recovery in the Quare Impedit by Default, a Writ to the Bishop was awarded without any Scire facias against Griffin; for he is Possessor, and so the Statute of 25 E. 3. calls him, and gives him Authority to plead against the King, and every Release or Confirmation made to him is good. But to this it was answer'd, That as to the Scire facias there needs none here against the new Incumbent, for he comes in pendant the Writ, and that appears by the Record; but if he had been in before the Writ brought, then a Scire facias would lie, and cited 9 H. 6. It was adjourned. Le. 293, 294, 295. pl. 402. Hill. 27 Eliz. B. R. Williams v. Blower.

the Plaintiffs in this Writ of Deceit were damnified &c. And upon this Judgment R.W. brought Writ of Error, and the Judgment was revers'd; but not for any Matter in Law. D. 353. b. 354. a. pl. 30. 31. Mich. 18 & 19 Eliz. Blower v. Williams. — Ibid. Marg. 354. a. pl. 31. says, So Note, That he was not restor'd to the Incumbency again in the Writ of Deceit, because he did not lose it by the Supposal of the Writ of Quare Impedit, which supposed the Church to be void.

22. If the Clerk comes in under the Title of the Plaintiff, and since the Whatever same, he shall be removed; but if he come in by Title Paramount, he shall Person is not be removed. And for that the Clerk comes in hanging the Writ, it presented and seems that he shall be removed. Per Anderson Ch. J. Quod Periam J. admitted at- Concessit. Goldsb. 105. in the Case of Beverley v. Cornwall. ter the Action brought, un- less where

the Title of the Patron is Paramount the Title of the Plaintiff, such Presentee shall be removed upon a Recovery by the Plaintiff. Per Anderson Ch. J. 3 Le 139. pl. 188. Mich. 28 Eliz. C. B. in the Case of Moore v. the Bishop of Norwich. — S. C. & P. by Anderson. Goldsb. 3. pl. 7.

23. If the King recovers his Presentment unto a Church, and has a Writ And it ap- to the Bishop &c. to remove the other's Incumbent, for which the Incum- peareth by bent sueth an Appeal in the Archbishop's Court &c. by reason whereof the Register, Archbishop sendeth a Prohibition that he do not admit the King's Clerk That ano- pendant the Appeal &c. then the King shall have a Writ directed to the Person who recovereth Archbishop and his Officers to take off his Inhibition, and that they do no- his Present- thing, nor suffer any Thing to be done by others, in Derogation of the ment, or Crown or of the King's Right; and shall have another Writ against the Incumbent, that he do not prosecute such Appeals, Provocations, or other present, shall Process or Impediments. And also the King may have an Attachment di- have ju b rected unto the Sheriff against such Incumbent, if he go on there after Writs of such Prohibition directed unto him. F. N. B. 43. (A) Prohibition unto the Spi- ritual Judges

or the Party, that they shall not proceed, or prosecute such &c. and also Attachment against them if they do &c. F. N. B. 43. (B)

24. Letturer was removed for not officiating in Person as the Foundation required. MS. Tab. &c. cites 1720. Philips v. Walter.

For more of Presentation in General, See Advowson, Collation, Simony, and other proper Titles.

(A) Prefumption.

1. IF the Eldest Son be beyond Sea at the Death of the Ancestor, and the youngest enters into the Land, he is not accounted in Law a Disseisor; because the Law presumes, that he preserves the Possession for his Brother; But if upon his Brother's Return he keeps him out of Possession, then the Law looks upon him as a Disseisor. Per Doderidge. Lat. 68. Pasch. 1 Car. in Mayow's Case.

2. Casual and Accidental Things are not to be presum'd, unless alleg'd. Arg. Hard. 81. Mich. 1656. in the Case of the Attorney General v. Buckeridge.

3. Powel Justice says, he does not know any Case where a Man shall be made a Tortfeasor by Presumption only. 2 Lutw. 1568. Mich. 4 W. & M. in Case of Gwin v. Pole.

4. Where the Law intrusts Persons as (Justice of Peace) with the Execution of a Power, the Court ought to give Credit to them in the Execution of that Power; tho' if they make a false Return whereby the Party

Party and Justice are abused, they may be punished. 10 Mod. 382. Hill.
3 Geo. B. R. the Queen v. Simpson.

5. *Odiosa & Inhoneſta non ſunt in lege Præſumenda & in factò quod ſe habet ad Bonum & Malum magis de Bono quam de Malo præſumendum eſt.* See Maxims.

6. *Semper præſumitur pro Sententia & Pro Legitimatione puerorum.* See Maxims.

Stabit Præſumptio donec probetur in Contrarium. See Maxims.

For more of Prefumption in General, See **Length of Time, Trial-Evidence,** and other proper Titles.

Privilege.

(A) Of Officers in Courts [from *Offices and Duties*]

So of a Clerk of B. R. Palm 392. Paſch. 21 Jac. Stamp's Caſe.

1. **I**F an Attorney of B. R. be made a Churchwarden of a Pariſh, he ſhall have a Writ of Privilege out of B. R. ſhewing his Privilege to be diſcharged thereof for his Attendance in the ſaid Court. 19. 14 Car. B. R. *Felix Wilſon* being an Attorney of B. R. was made Churchwarden of Hanwell, and reſuſed it, and he was ſued in the Spiritual Court to execute the ſaid Office, and Prohibition granted.

S. P. of a Clerk of the Court; and it was agreed by the whole Court, that for all Offices which

2. *Cr. 15 Car. B. R. Mr. Barker's Caſe* being elected Churchwarden of Aldermay in London, and ſuch Writ granted.

3. Clerks of the King's Courts are not privileged from Watch and Ward, for they may find others to do it for them, and there needs not any Perſonal Attendance. *Cr. 15 Car. B. R. in the ſaid Caſe of Barker, ſaid by Juſtice Jones.*

See Noy. 112. Cor= ner's Caſe, but it ſeems ſtrangely reported.

4. An Attorney of B. R. was elected *Tythingman* of Taunton, in which Town a Cuſtom is pretended, *That every one ſhould be Conſtable, or Tythingman in his Turn, according to their ſeveral Houſes,* and he having purchaſed two Houſes in the Town was choſen Tythingman at the Leet there; He brought his Writ of Privilege to be diſcharged; becauſe he is to be attendant in B. R. It was moved, that it might not be allowed, becauſe here was a ſpecial Cuſtom, and ſhould an Attorney purchaſe many Houſes, there might not be Perſons enough to do the Service, as here he has actually purchaſed Seven. But all the Court held, That this cannot be a good Cuſtom; For then a Woman, being an Inhabitant in one of the ſaid Houſes, it might come to her Courſe to be Conſtable, which the Law will not allow. It was ordered, that he be diſcharged. *Cro. C. 389. Mich. 10 Car. B. R. Prouſe's Caſe.*

5. S. an *Attorney* of B. R. having Land within the Manor of H. in the County of Middlesex, *Ratione tenuræ* ought to serve *as Reeve* when elected, and he being now elected, prayed a Writ of Privilege that he should *not* be compelled to gather the Rents of the Lord, and to serve in that Office; Per Keiling Ch. J. this Writ lies here, and is a stronger Case than *Droules's* Case Cro. Car. 389. Twissden J. said, A Tenure may be created to such Intent to collect the Rents of the Lord; Et Adjournatur. Raym. 179. Patch. 21 Car. 2. Stone's Case. Though it was objected, that he was a Deputy holder, and by Custom [ought] to serve, as a Thing incident to his Estate created by the same Custom, and though it was also said, that he might execute this by Deputy, yet the Court granted the Writ; For to the 1st. it was said, that the Privilege of this Court is as ancient as the Custom of any Manor; and to the 2d. he is responsible for his Deputy. Lev. 265. S. C. — Vent. 16. & 29. S. C.

6. Such as have Privilege of Chancery sometimes have a Superfedeas of Privilege granted them as a Protection; the most extensive of which Sort contains both an *Injunction* and *Superfedeas*, directed to all and singular Justices, Judges, Sheriffs &c. injoining them *not to molest or vex a Clerk* of one of the six Clerks of this Court in his Privileges, and (amongst other Things) not to put, or *chuse him into any Office of Collector, Churchwarden*, or other common troublesome Office; and if any Distress has been made upon him on that Account, without Delay to release it. P. R. C. 287, 288. Curf. Cane. 495. cap. 18. S. C.

(A. 2) Of other Persons.

1. SIR W. H. was seised of the Manor of R. in Essex, in which he prescribed to have a Leet. An *Alderman of London* lived within the *Precincts thereof*, and was presented by the Homage to be Constable, and this Presentment was removed by Certiorari into B. R. and the Alderman was discharged; because he was obliged as Alderman to be present at London for the Government of the City. Jo. 462. pl. 4. Trin. 16. Car. B. R. Alderman Abdy's Case. And though it was said, That he might execute it by Deputy, and his personal Attendance is not requisite by the

Custom of the Manor, yet Non Allocatur; And thereupon a Writ was awarded to be directed to the Lord of the Manor to discharge him. Cro. C. 585. pl. 3. 16 Car. B. R. S. C.

2. *Captain of the Guards* is not privileged from being Reeve of a Manor. Lev. 235. Sid. 355. Hill. 19 & 20 Car. 2. Sir Walter Vane's Case. S. C.

3. A *Doctor of Physick* was chose Constable, and the Court thought Persons of Quality should be privileged against such Offices, and therefore made a Rule that he should be discharged of the said Office Nili &c. Sid. 431. Mich. 21 Car. 2. B. R. The King v. Pordich.

4. A Writ of Privilege was prayed to excuse one from the Office of *Expenditor in the Levell of Romney-Marsh*; 1st. For that he was an *Ecclesiastical Person*. 2dly, Because all the Land he has in the Marsh is in Lease for 99 Years; The Writ was granted by Rainsford and Moreton J. they only being in Court, Moreton for the first Reason, and Rainsford for the 2d. Lev. 303. Mich. 22 Car. 2. B. R. The Archdeacon of Rochester's Case. Dr. Lee's Case. Vent. 105. S. C. by the Name of Dr. Lee's Case. — S. C. Mod. 282. says it was objected, That the Archdeacon's

Predecessors did execute this Office; and the Court ordered, that Notice should be given, and Cause shewn why the Doctor should not do the like; But afterwards the said two Judges ruled, that he should be privileged; And it is there said, that the Land being in Lease, it seems that the Tenant, if any, ought to do the Office. And the Writ was granted — S. C. cited 6 Mod. 14. Patch. 3 Ann. B. R.

5. *High Constable* was discharged from serving the Office of *Overseer of the Poor*, during his High-Constableship. 2 Jon. 46. Pasch. 28 Car. 2. High-Constable of Wanstead's Case.

6. The *King's Officers*, though they may execute the same by Deputy, are privileged from Parish Offices, though they drive Trades in the same Parish, and such Privilege is *grantable out of Chancery* as well as the Exchequer. 2 Chan. Rep. 196. 32 Car. 2. Raymond v. Parish of St. Botolph's Aldgate.

7. Note, a Writ of Privilege was moved for to have a *Clergyman*, who appeared to have *no Cure of Souls*, privileged from the Office of *Overseer of the Poor*. And though Holt Ch. J. seemed against it, because he thought their Privilege of Exemption was only extendible to their Spiritual Revenues, and if in any Case they were Personal, it was only from Common Law Offices, and specially if they were without Cure, as here, yet the other three Justices were strongly against him; But however, for his Lordship's Satisfaction, desired it should be stirred again. 6 Mod. 140. Pasch. 3 Ann. B. R. Anon.

(B) Privilege. For what Causes.

But if he was not coming to the Court at Westminster it is otherwise; For if he comes to London in the Vacation mesne between the being sued in Bank and the Arrest in London, he shall not have the Privilege. Br. Privilege, pl. 34. cites 2 H. 7. 2. — One that was coming to the Court of B. R. to attend upon his Cause, was arrested as he was coming, and was forced to put in Bail; but upon a Motion, and making it so appear to the Court, he and his Bail were both discharged. Hill. 22 Car. And the Party that arrested him had been also punished, had he not pretended that he knew not that the Party came about his Business depending in the Court; for the doing of this was an Affront to the Court, as well as an Injury to the Party arrested. L. P. R. 2 Vol. 369. — But to have the Protection of the Court, the Party must appear in Person, that the Court may examine him, and that they may be satisfied upon his Oath, that he was either prosecuting or defending some Suit pending in that Court, when he was arrested. Gilb. Hist. of C. B. 167.

1. If a Man be arrested coming to Westminster to answer an Action there, he shall have the Privilege. 2 H. 7. 2. b. 9 H. 6. 44.

2. So if he be arrested returning from the Court he shall have the Privilege, 2 H. 7. 2. b.

S. P. Gilb. Hist. of C. B. 167. cites Fitzh. Corpus cum Causa. 151. S. C.

3. If a Man be sued in Bank, and he goes to another Place by Leave of the Court to inquire for Evidences concerning this Matter which he has there, he shall have the Privilege if he be arrested there. 13 H. 4. 1. b.

S. P. Gilb. Hist. of C. B. 167.

4. But in this Case, if he has not Leave of the Court to go there, he shall not have the Privilege. 13 H. 4. 1. b.

Br. Privilege, pl. 21. cites S. C. & P. but

5. If the Defendant, in a Writ of Trespass, be arrested in another Court, in coming at the Return to answer the Plaintiff he shall have his Privilege. 4 H. 6. 8.

says, that he was dismissed till they were advised, quod nota, but that by 2 H. 5. cap. 2. it is enacted, that he shall be remanded where he shall remain, and shall not be dismissed.

In such Case he shall have his Privilege if arrested in a Town Corporate at such Distance; For it may be that he went thither to buy a Horse, or other Things necessary for his Journey. Br. Privilege, pl. 4. cites S. C.

6. If a Man be arrested upon a Writ returned in Bank, if he goes 40 Miles out of his Way to another Place to buy a Horse to come to London, and he is there arrested, yet he shall have his Privilege. 9 H. 6. 7. b.

7. If I have an Action pending in B. and my Goods are arrested in London, which ought not to have Privilege, If I render my Body Voluntarily to free my Goods, I shall not have the Privilege, because it was my own Act to render my self. 20 H. 6. 3. b. Adjudged.

Br. Privilege, pl. 6. cites S. C. If in Plaintiff against a Man in London,

don, his Goods are attached by the Custom, and he renders his Body to Prison to dissolve the Attachment, yet he shall have the Privilege of the Bank, if he was impleaded there before, notwithstanding that the Render to Prison was his own Act; For he was in by virtue of the Plaintiff. Br. Privilege, pl. 29. cites 38 H. 6. 12. — S. C. cited 8 Rep. 143. b. in Dr. Drury's Case. — See pl. 23.

8. If a Man be arrested in going to London, tho' he has an * Action pending in Bank, yet if he was not coming to this Court, he shall not have the Privilege. 2 H. 7. 2.

See pl. 1. Fol. 23.

9. If the Plaintiff, in a Suit in Bank be arrested in London by Defendant upon a Plaintiff there, before the Return of the Writ in Bank, he shall have his Privilege. 11 H. 6. 22. 52.

A. impleaded B. in C. B. and had Days to appear,

and the Defendant arrested the Plaintiff coming toward the Court to prosecute his Suit, the Plaintiff shall have Privilege for his own Suit. Br. Privilege, pl. 57. cites 11 H. 6. 27.

10. If a Man, having an Original depending returnable in Bank, comes to London 3 Weeks before the Return for this Cause and no other, and there is arrested, he shall have the Privilege. 11 H. 6. 3. But if he comes so long before the Time, because he is sick, to be refreshed, he shall have the Privilege. 11 H. 6. 52.

This seems misprinted, and the Year book is, that if the Plaintiff was arrested 2 Days

before, it shall be intended to prevent his keeping of his Day, and therefore shall have his Privilege; but if it was 2 or 3 Weeks before the Day it would be otherwise, For then it could not be intended, That his Coming was to keep his Day, unless other Cause was shewn, as that he had been sick, and that his Coming so long before, was to refresh himself, 11 H. 6. 52. a. pl. 16. but I do not observe the Point mentioned at 11. 6. H. 3. — And see pl. 12, 13.

11. But if a Man does not come to London to take a Suit at the Common Law, but is there remaining, tho' he has an Action pending in Bank, yet he shall not have the Privilege if he be arrested there. 11 H. 6. 3.

12. This is true, if he be arrested 2 or 3 Weeks before Return of the Writ in Bank; For then he could not be in coming to the Bank. 11 H. 6. 52.

See pl. 10. It appeared by Examination, that Defendant

in Bank was arrested in London in the Vacation, when he need not come about his Suit at Westminster, and therefore it was the Opinion of the Court that he should be remanded. Br. Privilege, pl. 31. cites 39 H. 6. 50.

13. But if he was arrested there but 2 Days, or such little Time before the Return, he shall have his Privilege, tho' he be staying there; For by this Arrest he cannot keep his Day in Bank. 11 H. 6. 52.

See pl. 10. One impleaded in Bank came to London 12

Days before the Term, and is arrested in London; Upon Oath that he came so long before the Term, to retain Council in his Matter in Bank, the Privilege was allowed him. Br. Privilege, pl. 28. cites 38 H. 6. 4. — In Debt, Exigent was awarded in Trinity Term returnable in Hilary Term, and Mesne, viz. in Mich. Term the Defendant came to London, and was arrested, and prayed Privilege; Per Brian Ch. J. he shall have the Privilege, if he came for Counsel in the same Cause; And therefore the Plaintiff in London took out an Original in Bank against the Defendant, and he was compelled to answer to it immediately, and had Privilege; quod nota. Br. Privilege, pl. 45. cites 20 E. 4. 12.

14. A Man who dwelt in London was impleaded at Westminster, and after was arrested in London, and was dismissed by the Privilege, tho' he dwelt in London, as well as if he had been arrested in London coming out of the Country to Westminster, to have appeared at a Suit there; But Brook says it seems that this was in the Term; For contra, it seems if he had been arrested in the Vacation. Br. Privilege, pl. 55. cites 11 H. 6. 52.

North's Notes
in pl. 17.

15. A Man sued a Replevin, and the Defendant affirmed Plaintiff in a Base Court by Covin to have the Goods distrained to be attached, so that Replevin should not be thereof made; and the Sheriff returned it, and the Plaintiff prayed Superfedeas for him and his Goods, because the Court of Bank has the elder seisin by the Replevin, and he could not have Privilege by Superfedeas for his Goods, but only for his Body; But per Laicon he shall have it for both; but by several, the Plaintiff may have Certiorari for all if he will, and see elsewhere, that the Attachment shall not dissolve the Distress taken before. Br. Privilege, pl. 51. cites 16 E. 4. 8.

The Plaintiff coming up to follow his Suit after his Year, after his Bail estreated,

16. Where Matter is continued for a Year, by reason that it is in Arrestment, a Man shall have Privilege. Per Brian. Ch. J. Br. Privilege, pl. 45. cites 20 E. 4. 12.

was arrested in London, and had his Privilege. Toth. 218. cites 1588. Marshal v. Moor — S. C. cited P. R. C. 285. it appearing, that he came up only for the following his Suit. — Curf. Canc. 496. S. C.

And per Sulharder, if a Man claims the Privilege by Action

17. A Man brought Corpus cum causa, to be removed out of London, because he is indicted of Trespass in B. R. And by the best Opinion he shall have the Privilege. Br. Privilege, pl. 47. cites 2 R. 3. 16.

brought by himself, he shall be examined whether it be brought by Covin. Ibid. — Where the Action is brought in the same Term, he shall be examined of the Covin; but if it be in a former Term, the Record shall be credited, and the principal Case was put off &c. therefore quære. Ibid.

18. He who has Attorney, and comes to commune with him, and is arrested in London shall have Privilege. Br. Privilege, pl. 34. cites 2 H. 7. 2. Per Townsend.

19. And he who comes to a Vill to merchandize, and after has Notice that Pluries Capias is issued against him, and it is returned, and that if he does not appear Exigent shall issue, there if he would appear, and in the mean Time he is arrested, he shall have the Privilege. Per Townsend; quære. Br. Privilege, pl. 34. cites 2 H. 7. 2.

So of a Ser-
vant or Fin-
mer, who
comes to
bring Mo-
ney to his Lessor, who is in Suit, to maintain the Suit. Ibid.

20. Note, that where Cestuy que Use comes to Westminster to maintain the Suit of his Feoffee in Use, and he is arrested, he shall have the Privilege. Br. Privilege, pl. 1. cites 27 H. 8. 20.

So in Debt
against Ba-
ron and
Feme, Super-
fedeas of

21. If the Baron alone be impleaded in C. B. and in coming to defend the Suit he and his Feme are both arrested, they shall both have the Privilege. D. 377. Trin. 23 Eliz. Anon.

Chancery was cast for the Baron; and because the Feme cannot answer without her Baron, and they are one Person in Law; therefore Per Cur. It shall serve for both. Br. Privilege, pl. 17. cites 22 H. 6. 38.

P. R. C. 289.
— Curf.
Canc. 496.
cap. 18.

22. The Defendant, coming to execute a Commission, was arrested, and had a Corpus cum Causa to set him at Liberty. Toth. 218. cites Trin. 23 Eliz. Jackson v. Vaughan.

23. Action of Battery was brought in C. B. and upon Not Guilty pleaded, the Parties were at Issue; and when the Jury went out to consider of their Verdict, the Defendant caus'd the Plaintiff to be arrested by Process out of B. R. for a Battery done to him before by the Plaintiff. The Court being inform'd of this, would have discharg'd the Plaintiff, but that he having put in Bail, they said they could not, but commanded the Plaintiff in this new Action to release his Arrest, which he did; and they set a Fine on him, which he immediately paid in Court. And they said, that the Suitors ought safely to come and go by the Privilege of the Court, without Vexation elsewhere. Goldsb. 33. pl. 8. Mich. 29 Eliz. Lea's Case.

24. A Defendant coming up upon an Attachment would have had his Privilege against a Citation in the Arches, and could not; because a Citation is no Stay of his Person. Toth. 218. cites Pasch. 30 Eliz. Cook v. Dix.

25. The Plaintiff was arrested when he came up to examine Witnesses, and was discharged by Superfedeas of Privilege. Toth. 218. cites Trin. 1591. or 32 Eliz. fol. 738. Barnardiston v. Bawd.

26. The Plaintiff was releas'd out of Prison, tho' detained at other Men's Suit, because he was arrested when he was going about his Business or Suit in Chancery. Toth. 211. cites 8 Car. Smith v. Garby.

27. When a Person complains to the Court of B. R. of a Misdemeanor, and it is adjudged that his Complaint is vexatious; this Court will not allow the Privilege of protecting him in his Return. 11 Mod. 79. pl. 13. Pasch. 5 Ann. Anon.

P. R. C.
289.—
Curf. Canc
496. cap. 18.

(C) For what Things. And in what Action.

1. If a Man was condemned in London, and taken before the Writ purchas'd in Bank, he shall not have his Privilege, but shall be remanded. 10 H. 6. 10. b.

2. If a Man, who comes to London to answer an Original against him returnable in Bank, be, before the Return, arrested upon a Plaint in London prior to the Date of the Writ, he shall not have the Privilege. * 9 H. 6. 54. b. 10 H. 6. 10. b. For he shall not be discharged.

upon a Plaint, he shall have the Privilege, tho' the Plaintiff be *Non-suited* or *Essoigned*, or will not appear, so that the Writ be returned, and the Teste of the Writ prior to the Plaint upon which he is arrested; but if the Writ be not returned, he shall not have the Privilege; for the Court has not any Record; but upon *Plaint affirmed before the Teste of his Writ*, he shall not have Privilege. Br. Privilege, pl. 5. cites S. C.

* If after his being impleaded in Bank, he is arrested in London

3. So if the Plaint was the 4th Day of October, and the Writ bore Date the 11th Day, yet if it be found upon Examination that the Writ was delivered the 8th Day, he shall not have the Privilege. 9 H. 6. 54. b.

4. If a Man, coming to answer an Original, be arrested upon a Plaint in London subsequent to the Date of the Writ, but before the Return, if the Original be after returned, he shall have his Privilege, tho' the Plaintiff in the Original has not yet done any Thing in the Writ; for by the Return of the Writ the Original was pending from the Date, *ab Initio*. 9 H. 6. 54. b. Curia. 10 H. 6. 10. b.

If a Man has a Suit depending in B. R. and be coming to Town to prosecute or defend it

here, he cannot be sued elsewhere; Per Twisden. Mod. 66. Mich. 22 Car. 2. B. R. Anon.

5. So shall it be tho' the Plaintiff in the Original be outlaw'd at the Return. 9 H. 6. 55. b. Curia.

6. But if a Man sues an Original against me, but does not deliver the Writ to the Sheriff, nor any Writ is returned; and I supposing the Writ to be returned, come to answer it, and in coming am arrested, I shall not have the Privilege; for here no Writ is depending against me. 9 H. 6. 54. b.

7. If I am arrested in an inferior Court coming to answer a Capias sued against me in Bank, I shall have the Privilege, tho' the Writ be returned *Non est Inventus*. 20 H. 6. 4.

Br. Privi- 8. **A Man who is coming to prosecute a Suit shall have the Privilege**
lege, pl. 55. **for all his Goods necessary * for the Journey.** 20 D. 6. 4.
cites S. C. —

pl. 24. cites 9 E. 4. 4. That it was touched there, that he should have Privilege there for his Horse and *Servant* who comes with him. — Ibid. pl. 27. cites 21 H. 7. 39. That he shall have Privilege for his Horse and other Goods. — It was said by Ascough and Fulthorp, When a Man comes to London about his Suit, He and his Horses and his Goods necessary to his Journey shall be privileg'd. And by Newton, he shall have the Privilege for all his Goods brought with him, tho' he brings Surplusage, and so of all his other Goods, *Quære inde*; And so after he was remitted as before. Br. Privilege, pl. 6. cites 20 H. 6. 4.

* S. P. And also for his *Expences*. Br. Privilege, pl. 29. cites 38 H. 6. 12.

Br. Privi- 9. **So if he brings with him more Goods than are necessary, (yet if**
lege, pl. 55. **he brings them with him for Defence of the Suit) he shall have the**
cites S. C. — **Privilege for them.**
pl. 8. cites

34 H. 6. Per

Prifot. *Quod non Negatur*. [And see the Notes at pl. 8. Per Newton]

Br. Privi- 10. **But he shall not have Privilege for such Goods as he carries**
lege, pl. 55. **with him to merchandise.** 20 D. 6. 4.
cites S. C. —

Ibid. pl. 6. cites S. C. — pl. 8. cites 34 H. 6. 15. Per Prifot. — Br. Privilege, pl. 29. cites 38 H. 6. 12. — S. P. Gilb. Hist. of C. B. 198.

Fol. 2. 4
Br. Privi- 11. **If Defendant in an Action of Debt in Bank be arrested in Lon-**
lege, pl. 11. **don for the same Debt by the same Plaintiff, he shall have the Privilege;**
cites S. C. — **and when he comes into Bank upon the Habeas Corpus, tho' the**
Plaintiff be Nonsuited, yet he shall be dismissed. 12 D. 4. 21.

Br. Nonsuit, pl. 13. cites S. C. — Gilb. Hist. C. B. 168. cites S. C. If it appears to the Court, that it is the same Plaintiff, Defendant and Action, the Defendant shall be discharg'd; because at the Time of suing out the 2d Action, they were legally attach'd in the superior Court.

12. He who *rides with his Master to London, to bring back his Horse*, shall have the Privilege. Br. Privilege, pl. 40. cites 10 E. 4. 4.

13. If a Man comes to *sue Original*, and is arrested before he can sue it, he shall be examined, and shall have the Privilege, tho' no Plea be pending. Br. Privilege, pl. 1. cites 27 H. 8. 20.

14. A Clerk of B. R. was *sued*, after the Statute of 21 Jac. cap. 23. in an inferior Court, for a Sum under 5*l*. And Per Jones and the Chief Justice, a Writ of Privilege shall be allow'd; for the Statute, being general, never intended to take away the Privilege of the Clerks of this Court. And it was Rul'd accordingly. Palm. 403. Pasch. 1 Car. B. R. *Armington's Case*.

15. A Serjeant at Law was Plaintiff in the Admiralty, and the Defendant there mov'd for a Prohibition in B. R. The Court doubted, Whether Privilege should be granted in *Prohibition*, Ideo *Quære*. Sid. 65. pl. 38. Mich. 13 Car. 2. B. R. *Serjeant Morton's Case*.

Gilb. Hist. of 16. If a Man comes to B. R. *as a Witness*, he is protected *cundo & re-*
C. B. 168. *dcundo*. Per Twifden. Mod. 66. Mich. 22 Car. 2. B. R. pl. 13. Anon.
S. P. For

since they are oblig'd by the Process of the Court to appear, they will not suffer any one to be molested whilst he is paying Obedience to their Writ.

A Witness was arrested as he was attending the Court to give Testimony in a Cause. Roll Ch. J. bid them take a Superfedeas, and ordered the Parties to shew Cause why an Attachment should not go against them who arrested him. Sty. 395. Mich. 1653. Anon.

If a Witness coming to testify in a Cause in Middlesex be arrested in London by one knowing the Cause, he has no Remedy but by Habeas Corpus to examine and deliver him thereby; but if there be any Contempt by the Officer &c. an Attachment may afterwards be awarded against him; for they are as well to have Privilege as the Parties. Keb. 220. Hill. 13 Car. 2. *Vandevelde v. Luellin*.

S. C. 3 Lev. 17. In Debt, upon a Penal Statute, *Qui tam* &c. against an Attorney
398. Ad- in C. B. the Question was, If he shall have his Privilege or no? And
judged that ruled upon Demurrer, That he shall have his Privilege in a *Debt Qui tam*
the Writ &c.

&c. because it is only the Suit of the Party; tho' in Information he shall not have his Privilege. And it was said to be the Suit of the Party, 1st, Because he may be Nonfuit, the which he cannot be in an Information. 2dly, He may pray a Tales without Warrant of the Attorney General. 3dly, This shall not be determined by the Demise of the King. And cited Cr. Car. 10. *Farrington's Case* there adjudg'd to be merely the Suit of the Party. Skin. 549. Trin. 6 W. & M. B. R. Baker v. Duncomb. — Lutw. 193. S. C. — S. P. 1 Salk. 30. Trin. 7 W. 3. B. R. Kirkham v. Wheeley.

(D) *What Persons shall have the Privilege.*

1. **T**HE Farmer of the Chief Clerk of B. R. shall not have the Privilege of the Court, because he is not any Necessary Attendant upon him. 10. 1. Ja. 2.

2. The Steward of his Lands shall have the Privilege. 20 H. 6. Defendant moved to be discharged

26. b. out of Execution, being Steward of the Household to Baron Bourk, a Foreign Envoy, and obtained a Rule to shew Cause, which was afterwards discharged on hearing Council on both Sides, it appearing that the Defendant was a Trader, that he resided at his own House in the Old Palace Yard, Westminster, and that the Envoy was at Hanover at the Time of the Arrest. Notes in C. B. 281. Hill 9 Geo. 2. *Cain v. Molineux*

3. If a Man be not retained with a Clerk in Chancery, but is his Servant to do his Commands only at this time of the Suit, yet he shall have the Privilege. 11 H. 6. 8. b. Quære. Br. Privilege, pl. 54. cites S. C. — No Servants shall have

Privilege, but those who are Attendants at the Office, or upon their Master, as Cooke, Butler &c Per Littleton. Br. Privilege, pl. 8. cites 34 H. 6. 15. — Servant of the Chancery shall have the Privilege, contra of Servant of the Servant. Br. Privilege, pl. 9. cites 34 H. 6. 29. — But per Prior, Servant of a Gentleman, who is Servant of the Chancery, shall have the Privilege, but this is as Servant of the Chancery, and not as Servant of the Servant Quære. Ibid.

4. Bill lies against Filazer of the Court. Br. Bill, pl. 5. cites 7 H. 6. 36.

5. Debt against H. S. who cast Superfedeas of the Exchequer as Servant of the Lord Cromwel, Chamberlain of the Exchequer; Pole said, that the Privilege extends to those who are Accomptants in the Exchequer, and to the Treasurer of England, and other Assistants of the Court, and their familiar Servants who are about the Offices and Business of the Account in the Exchequer, and to their menial Servants dwelling in their House, and to no others; and that the Defendant is Deputy to the said Ld. Cromwell at Hull, and is accountable there, and not in the Exchequer, and that he is not a Household Servant of the said Ld. Cromwell, which Newton agreed; For the Privilege does not extend to the Shepherd nor Carter, but to the Servants who are about his Person, or attendant at the Court; and they demurred upon the Superfedeas, because the King recorded by the Writ, that he is continual Servant to the Chamberlain, and Day given over to the next Term, and there he cast another Superfedeas, rehearsing him to be menial Servant. Per Newton, by the Day given over, the Jurisdiction is affirmed but for the first Superfedeas only; Per Portington, He who pleads a Plea to the Jurisdiction of the Court, shall not plead other Plea to the Jurisdiction after; but here is no Plea pleaded, but Day given over upon the Superfedeas; therefore the last Writ may well serve. Br. Privilege, pl. 16. cites 22 H. 6. 19.

6. If the Sheriff's Bailiff of H. who comes to bring the Writs to Court, and to receive others &c. be arrested, he shall have the Privilege; Per Littleton. Br. Privilege, pl. 24. cites 9 E. 4. 47.

7. In Debt, *Cook, Butler of Officers of the Court &c.* shall have Privilege, and yet Bill does not lie against them; For they are not bound to be attendant in the Court as Officers and Attornies are. Br. Privilege, pl. 42. cites 11 E. 4. 3. Per Littleton J.

So of a Prisoner of the Court, he

shall have Privilege, and yet Bill does not lie against him. Ibid.

Br. Attorney, pl. 67. cites S. C.

9. Bill by *Attorney of B. R.* was rejected and abated; for no Attorney is there of Record, nor his Attendance necessary; But otherwise it is in C. B. For there he, who is Attorney of Record, shall have the Privilege to plead by Bill. Br. Bill, pl. 24. cites 1 H. 7. 12.

10. G. brought *Debt against T. Warden of the Fleet*, by Bill of Privilege, and he would not appear, and the Court was in great Doubt what Remedy the Plaintiff had to compel the Defendant to appear; for he cannot be forejudg'd the Court, because he has an Inheritance in his Office. And after it was furnished to the Court, that the said T. had made a Lease of his said Office to another for three Years, and then the Court was clear of Opinion, that the said T. should not have the Privilege; for now during the Lease he is not Officer, but the Lessee. 2 Le. 173 Trin. 29 Eliz. C. B. Gittinson v. Tyrrel.

11. A Writ of Privilege was signed by all the Justices of the Court of C. B. for G. V. a Clerk under the *Custos Brevium*, to free him from being a Soldier, reciting, that it is the Custom and Privilege of that Court, time whereof &c. that neither the Attornies nor Clerks shall be pressed for Soldiers, nor chose into any Office Sine Voluntate sua, but ought to attend the Service of the Court. Cro. Car. 11. pl. 2. Trin. 1 Car. C. B. George Venable's Case.

Keb. 137. pl. 70. S. C. that the Court conceived the Plea naught and without any Colour, and enquired who the

Counsel was that set his Hand to the Plea, in order to punish him.

12. Debt on Bond of 100 l. Defendant pleaded *to the Jurisdiction*, that none of the Privy Chamber ought to be sued in any other Court, at the Suit of any Person, without special Licence of the Lord Chamberlain of the Household, and that he is one of the Privy Chamber. Plaintiff demurred, and a Respondeas Outiter awarded; for the Plea is ill; and the Court seemed to be offended with the said Plea. Raym. 34. Mich. 13 Car. 2. B. R. Barrington v. Venables.

S. C. Freeman. Rep. 389. pl. 501. accordingly; But by Twissden J. if upon Examination the Joining appears to be by Covin, he shall have his Privilege. — 2 Mod. 296. S. C. by Name of

Hambleton v. Scroggs & al. in the Exchequer Chamber, and there North Ch. J. said, That he always took it to be an uncontroverted Point, that a Serjeant at Law should be sued only in C. B. by Bill; that he is bound by his Oath to be there, and when he brings a Writ of Privilege, it is always out of that Court and no other. Pasch. 30 Car. 2. Curia advisare vult. — An Action was brought by Bill against a Serjeant at Law for Work done, the Defendant pleads in Abatement that he ought to be sued by Original, and not by Bill; on this a Demurrer was joined; and after many Arguments and Cases cited, the Court said, The Case of a Serjeant and Prothonotary's Clerk are upon the same Foot, neither of them being bound to personal Attendance, as Prothonotaries and Attornies are, so that he ought to have been sued by Original; and therefore the Court gave Judgment for the Defendant, that the Bill should abate

abate. Rep. of Pract. in C. B. 104, 105. Trin. 7 & 8 Geo. 2. Swain v. Girdler, Serjeant at Law. — Notes of Cases in C. B. 280, S. C.

14. The Clerk of the Clerk of the Crown Office is not privileged. 2 Show. *But the Clerk of the Clerk of the* 287. Pasch. 35 Car. 2. B. R. Ward v. Lawrence. *Clerk of the* Pells shall have Privilege. Cumb. 482. Hill 10 W. 3. Tombs v. Loyd.

15. It was adjudged, that an Attorney's Clerk has no Privilege. Comb. 12. Hill 1 & 2 Jac. 2. Gardner v. Strode.

16. An Action was brought against a Potchnotary's Clerk by Original. He pleaded, that he ought to be sued by Bill; to which Plaintiff demurred. And the Court gave Judgment, that the Defendant should answer over. Notes in C. B. 280. Trin. 7. & 8 Geo. 2. in the Case of Swain v. Girdler, Serjeant at Law. Cites it as Mich. 10 Geo. C. B. Rot. 360. Baker v. Swindale.

17. That the Defendant is an Attorney, or a Clerk in the Courts of Chancery or Exchequer &c. may be pleaded in Abatement. R. S. L. 6.

(E) Against whom he shall have the Privilege.

1. If a Man be coming to a Court, yet if he be arrested in another Court at the Suit of the King, he shall not have his Privilege. 9 D. 6. 44. Curia.

2. Bill of Privilege lies not against Attorney and his Feme; for the Feme is not privileged. Per Littleton and Priot. Br. Privilege, pl. 9. cites 34 H. 6. 25. Br. Bill, pl. 2. cites S. C. — S. P. In C. E. And if the Baron

has the Privilege of Chancery, this shall not serve for his Feme. Br. Bill, pl. 39. cites 35 H. 6. 3.

(F) What Court shall have the Privilege, and against what.

1. If a Man coming to answer an Action in Bank be arrested in the Marshalsea, he shall have the Privilege of the Bank; yet the other is an Ancient Court. 4 D. 6. 5.

2. So a Man shall have the Privilege of the Bank if he be arrested in London. 4 D. 6. 8. b. A Man was impleaded in Bank, and at

the Exigent was sued in London by Action of Debt upon the Custom of L. upon a Concessit solvere, and had Writ of Privilege, and was dismiss'd, notwithstanding that it was alleged that it was a customary Action which does not lie at Common Law; for after this Action determined in Bank, he may have new Action in London; for he cannot be attendant at two Courts simul & semel, and he who dwells in London and is arrested there, where he is impleaded in Bank, shall have the Privilege. Br. Privilege, pl. 30. cites 38 H. 6. 29.

If a Man be impleaded in any Court at Westminster, and after is arrested and condemned in London, where he ought to have the Privilege of Westminster, he shall be dismiss'd. Brook says Quere inde; for the Plaintiff cannot have Action at another Time, if he was in Execution. Br. Privilege, pl. 44. cites 16 E. 4. 5.

3. If a Clerk of B. R. be sued by Bill there for Land in a Corporation, of which the Corporation has Conscience of Pleas, yet they shall not have Conscience of this Plea, but the Defendant shall have his Privilege of B. R. for otherwise he shall be drawn to the Attendance

dance in Interior Courts. Cr. 4 Ja. B. R. *Butt's Case* by Dappam.

2 Brownl
266 S. C.—
Hard. 17.
in Case of
Baker v.
Lenthall,
cites S. C. by
Name of Guy
v. Rey-
nolds.—
So where P.

an Attorney of B. R. brought an Action of Trespass against the Warden of the Fleet, who came into C. B. and desired the Advice of the Court, he being an Officer thereof, and therefore ought not to be impleaded elsewhere. The Court said that because the Plaintiff has also his Privilege in B. R. as well as the Defendant both in C. B. this Equality shall render the Parties at Liberty, and he shall have the Benefit of his Privilege who first begins the Suit. And to the Warden was advis'd to answer. 2 Le. 41. pl. 56. Mich. 3. Eliz. Povey's Case.

The Plaintiff being an Accountant in the Court of Exchequer by Bill there, pray'd to be relieved against a bond put in Suit by Defendant in the Petty-bag, by Reason of his Privilege as Usher of the Chancery, the Defendant pleaded his Privilege as an Officer of the Court of Chancery. The Court agreed, that when both Parties are privileged, his Privilege shall take Place who sues first. And that in this Case the Suit in Equity to be relieved against the Penalty of the Bond is first attach'd here, and it is not the same Suit with that at Common Law, but distinct from it. And it was further said, that if both are privileged Persons, and the Attendance of the one is more requisite than of the other (as in the principal Case it is the Plaintiff here being an Accountant in this Court, and entered into his Account, as by his Bill is alleg'd, which cannot be completed by Deputy or Attorney) in such Case his Privilege shall be preferred to his own Cause of Privilege; Et a jornatur. But at another Day the Plea was overruled, and an Injunction granted till Answer. Hard. 117. pl. 2. Trin. 1638. Baker v. Lenthall.

If a Minister of C. B. brings Action there against a Minister of B. R. he shall not have Privilege of B. R. For C. B. has the eldest Seign by their Minister. Br. Privilege, pl. 40. cites 1 E. 4. 4. S. C. cited 2 Brownl. 267. in Case of Guy v. Sir George Reynell. A Man sued Plaintiff in London, and after the Defendant brought Writ of Debt in Bank, and had Privilege, and because the Plaintiff was elder than the Writ, therefore he was remanded, and had Proce'dendo; quod nota. Br. Privilege, pl. 37. cites 8 E. 4. 17.

5. If a Prisoner remains in the Fleet by Command of the Barons of the Exchequer, and Action is brought against him in C. B. the Court may command the Warden of the Fleet to bring him into Bank to answer. Br. Judges, pl. 29. cites 18 E. 3. and Fitzh. Office of Court 16.

6. Trespass was brought by A. against B. who was return'd Nihil, and the Plaintiff came to London to sue other Capias, and the Defendant arrested him in L. and the Plaintiff return'd in Bank by Writ of Privilege, and other Plaints and Surety of Peace, and Attachment of the Chancery were return'd; and he pray'd to be dismiss'd; and he who demanded the Peace was demanded and came not, by which he was dismiss'd of the Surety of the Peace, and of all the Plaints, and not of the Attachment, and the Defendant made no Fine. Br. Privilege, pl. 38. cites 4 E. 4. 15.

See (G) pl. 9. 7. Privilege of C. B. shall serve in B. R. Br. Privilege, pl. 22. cites 9 E. 3. 35.

And if he be impleaded in B. R. those of the Exchequer
8. If an Accountant in the Exchequer be impleaded in C. B. the Exchequer may send Superfedeas to them to surcease. Br. Superfedeas, pl. 38. cites 9 E. 4. 57.

will serve the Receiver of Account &c. For they cannot make Superfedeas to the King; for there the Pleas are held Coram Rege, and not Coram Justiciariis; and he shall be dismiss'd. Ibid.

One who was Receiver General of the Revenues of the Crown in the Counties of W. L. &c. being sued in C. B. brought a Writ of Privilege out of the Exchequer; but it was not allowed. D. 328. pl. 9. Mich. 15 & 16 Eliz. Hunt's Case.

Where the Sheriff returns Quod ante Ad-ven-tum brevis, the Defendant was taken by ar-
9. A Man was taken in the Country by Surety of Peace, by Warrant of a Justice of Peace, and after was arrested by Capias out of C. B. Per Brian, The common Course is that a Man so arrested shall have the Privilege, and ought to be dismiss'd out of C. B. which Townsend denied; and so it seems that Sessions of the Peace shall grant Privilege to a Man arrested. Br. Privilege, pl. 35. cites 2 H. 7. 4.

rant of the Justices of Peace, there the Defendant shall answer and shall make Attorney, and shall be remitted to the Justices of Peace ; quod nota. Br. Privilege, pl. 41. cites S. C.

10. One S. was *impleaded in C. B.* at the Suit of a Widow in an Action of Debt, and now came an Injunction or Writ of Privilege out of the Exchequer, reciting the said S. to be *one of the Grooms of the Queen's Privy Chamber, and Keeper of the Privy Purse*, and so accountable to the Queen; and that they do not hold Plea of the said Action, but that the Plaintiff sue in the Exchequer; but the Writ was utterly disallowed by the Court. 3 Le. 223. pl. 300. Hill. 30 Hill. in C. B. Seckford's Case.

11. Diggs being committed by the *Court of Requests* for not answering a Bill there for the same Matter for which he had a Bill here in *Chancery*, had a Corpus cum causa. Toth. 219. cites 36 Eliz. Lib. A. fo. 539.

12. In *Tressors* in B. R. the Trespass was laid *in Cornwall*, the Defendant pleaded in Abatement, and *set forth the Charter of King Edw. 1. granted to the Stannery-Court*, thereby enabling the Stannery-Workers to plead and be impleaded in the Stannery Court; and so prayed the Privilege of its being tried there; upon Demurrer the Court agreed, That if one be here *in Custodia Marshcalli*, he is *not to be fetch'd away*, and if being in Custodia Marshcalli, he should not answer here, none then could have Remedy against him; and therefore he was inforc'd to answer. 2 Bull. 122. 123. Mich. 11 Jac. Parke v. Lock.

13. One that is privileged *in Chester*, has Cause of Action *against A. who inhabits in Chester, and against B. who inhabits in London*. He cannot sue in the Exchequer in Chester, tho' he is privileged there; for by such Means he might bring one from Dover to answer to a Suit in Chester. Hart 59. Grigg's Case.

14. There are *three Sorts of Privilege in the Exchequer*. 1st, as *Debtor*; 2dly, as *Accountant*; 3dly, as *Officer of the Court*. Against the first of these any Man who hath a special Privilege in another Court, as an Officer of the Court, or an Attorney shall have his Privilege; Because the Privilege of a Man as Debtor is only a General Privilege; But if an Accountant begin his Suit here, no Privilege shall be allowed elsewhere; Because he has a Special Privilege, by reason of his Attendance, to pay his Account, in which the King hath a particular Concern; the same holds in an Officer of the Court, if he commences a Suit here, no Privilege in another Court shall prevail against him; Because his Attendance here is requisite, and his Privilege here is attached first by commencing his Suit. But where the Accountant has finished his Account, and reduced it to a Certainty, so that it is become a Debt, then he hath only a Privilege as a General Debtor has; So a Servant to an Officer, or Minister of the Court, has no Privilege against a privileged Person elsewhere. Per Cur. Hard. 305. Pasch. 16 Car. 2. in the Exchequer Clapham v. Sir J. Lenthall.

15. A Member of the University of Oxford sued in the Exchequer, and pleaded his Privilege, but it was not allowed. Hard. 188. Pasch. 13. Car. 2. Wilkins v. Shaelcroft.

16. *Latitat* was sued out of B. R. against the Defendants being *Commissioners of the Treasury*, thereupon Sir John May *Puisne Baron of the Exchequer* come into B. R. and *showed the Red Book*, which is an Ancient Book, and *reckoned a Record* in their Court, wherein it was said, that the Treasurer should have the Privilege of being sued only in that Court, and the Patent under the Great Seal, which constituted the Defendants &c. and granted to them Office of Treasurer of England was produced, and thereupon they demanded their Privilege might be allowed, and after some Debate, it was granted; And tho' it was urged, That there ought to have been a Writ of Privilege, brought, and the Sheriff would have returned somewhat of it &c. yet the Court said there was a Record to
judge

judge upon, and accordingly allowed the Privilege. 2 Show. 299. Patch 35. Car. 2. B. R. Lampen v. Sir Edward Deering & al.

17. The Cases wherein Attorneys, Officers &c. shall have their Privilege, if sued in another Court are to be understood, *when the Plaintiff can take the same Remedy against the Officer &c. in his own Court, as in that where he sues him.* G. Hist. of C. B. 169.

Attorney of C. B. was indebted to B. in 34 l. who was indebted to D. in 40 l. D. according to the Custom of London, attached the Money in the Hands of L. who was B's Attorney. L. brought a Writ of Privilege, which was allowed by all the Court, except Harper J. because the Attorney was not indebted to D. but only by Custom. And the Privilege of the Courts at Westminster ought not to be impeached by any Custom, and the Prothonotaries cited one Underhill's Case, where such Privilege was allowed. 2 L. 156. pl. 197. 20 Eliz. C. B. Lodge's Case.

T. an Attorney of B. R. covenanted to pay Newson 200 l. when he should make him a good Title of certain Lands, purchased of him. N. made a Conveyance to T. but there being some Incumbrances yet discharged. Some Creditor of N. hearing of this Covenant attached the Money (according to the Custom of Foreign Attachments in T's Lands as a Debt owing by him to N. whereupon T. sued his Writ of Privilege, and the Court was moved in Behalf of the Creditors, that this Writ of Privilege would not lie in B. R. because the Plaintiffs in the Sheriff's Court, who were Creditors of N. could have no Remedy against T. in B. R. or elsewhere, but at the Sheriff's Court, because this was a customary Way of Proceeding there, not warranted by the Common Law; nor can any Action at Common Law be brought in such Manner; And for those Reasons the Privilege was disallowed. 1 S. and 67. Patch. 19 Car. 2. Turbill's Case — S. P. Gilb. Hist. of C. B. 169. and seems to intend S. C. — Sid. 362. S. C. by Name of Markins v. Wigg, alias Turbill's Case accordingly. And that if such Privilege should be allowed, a Debtor, by putting his Estate into the Hands of an Attorney, would bar his Creditors; And tho' Lodge's Case, 2 L. 156. was limited upon, yet the Court paid no Regard to it, but disallowed the Privilege.

If a Writ of Entry, or other real Action be brought against an Attorney of B. R. he cannot plead his Privilege; Because, if this should be allowed, the Plaintiff would have a Right without a Remedy; For B. R. hath not Cognizance of Real Actions, G. Hist. of C. B. 169 — So if an Attorney of C. B. be sued in an Appeal, he shall not have his Privilege, for his own Court has not Cognizance of this Action, and by this Protection he should go unpunished. G. Hist. of C. B. 196.

(C) Of the Chancery, [and of other Courts.] In what Cases it shall be granted.

1. **If an Action be brought against 2, whereof one is Clerk of the Chancery, who ought to have the Privilege, yet if the Action cannot be severed, the Clerk shall not have his Privilege, Because the other cannot be sued in the Chancery, and so the Party should be without Remedy, if it should be granted for both.** 14 D. 4. 21. he admitted. 20. D. 6. 32. b.

— S. P. Cary's Rep. 96. East & Scudamore v. Bittenfon & Valence. — S. P. P. R. C. 289 — S. P. Curf. Canc. 497.

2. As in Debt against 2, if the one ought to have the Privilege of the Chancery, if he had been sued alone, yet he shall not have it in this Case, because the Duty is intire. 14 D. 4. 21 b.

Debt against 2 Executors, the one appeared, and the other made Default, and Writ of Privilege of the Chancery was cast after that the Plaintiff had counted against him, and it was disallowed, because both the Executors cannot be sued in the Chancery, and yet of Executors he who first comes by Distress shall answer, and here the one came without the other, and the Plaintiff counted against him, and yet the Superfedeas disallowed. Br. Privilege, pl. 18. cites 22 H. 6. 36.

3. The same Law of a Conspiracy against 2, whereof one is a Clerk of the Chancery. * 14 D. 4. 21 b. † 20 D. 6. 32. b.

* Br. Privilege, pl. 12. cites S. C. — † Br. Privilege, pl. 7. cites S. C. & P. by Markham.

4. But if an Action be brought against 2, and the Action may be severed, there, if the one be a Clerk of the Chancery he shall have the Privilege. 14 D. 4. 21.

Exchequer was issued forth for one. Per Newton, the Superfedeas shall be allowed; For he may sue against 2 here, and against the 3d in the Exchequer. Browne said, That in the *Superfedeas is Exceptis quo nos tangunt*, and therefore the King shall have the Moiety. And per Newton, this is well said, and therefore we will advise. Br. Privilege, pl. 14. cites 21 H. 6. 22.

5. As if a Trespass be brought against a Clerk of the Chancery and another, the Clerk shall have the Privilege, For he may be sued there, and the other at the Common Law. * 14 H. 4. 21 Dubitatur, 20 H. 6. 32. b.

* All the Writ shall abate. Br. Privilege, pl. 12. cites S. C. by Hall.

— Br. Brief. pl. 131. cites S. C. per Hill, that the Writ shall abate against the other; But that it was held Contra 34 H. 6.

In Trespass against two, where the one is Clerk of the Chancery, and he casts Superfedeas; it shall not be allowed for the one nor the other. Br. Privilege, pl. 9. cites 34 H. 6. 25.

Trespass was brought against B. an Officer of the Chancery and 3 others. B. cast his Privilege, and it was disallowed, because the others are joined with him, and they are not therepleadable. D. 377. pl. 32. Marg. cites Hill. 42 Eliz. C. B. Bacon's Case. — So in *Trespass* against C. and others, C. pleaded his Privilege as Clerk to one of the Prothonotaries of C. B. Plaintiff replied, that this Trespass was done by them jointly, and that he had taken out an Original against them all, and that this Declaration against C. was upon that Original, and that he still prosecuted the rest, to which the Defendant demurred, and Judgment was given (Twitden and Jones only present) Quod responderet outter; For C. being joined with others in the Action shall have no Privilege. Vent. 298. Mich. 28 Car. 2. B. R. Molyne v. Cook & al.

6. If A. be arrested at the Suit of B. upon a Latitat, and A. is detained in Prison for Default of Bail, and after A. removes himself in B. R. and there the Plaintiff declares against him In Custodia Marechalli. If A. be a Clerk of the Bank he shall have his Privilege upon his Plea, that he is a Clerk attendant to one of the Prothonotaries of B. tho' he be actually in Custodia Marechalli; Because he comes there upon this Suit. Mich. 11 Car. B. R. between Reeve and Jacey. Per Curiam.

7. But if a Clerk, or Attorney of Bank be In Custodia Marechalli at the Suit of A. and after B. declares against him In Custodia Marechalli, he shall not have his Privilege against B. Because he does not come there at the Suit of B. but B. declares against him collaterally; For he is truly as to him In Custodia Marechalli. Mich. 11 Car. B. R. in Reeve and Jacey's Case. Per Curiam.

S. P. Gilb. Hist. of C. B. 1-2. cites S. C. For being once ousted of his Privilege at the Suit of A. he can no

longer attend as an Attorney of the other Court, but is fixed in the King's Bench, and therefore cannot by the Supposition of the Necessity of his Attendance oust the Plaintiff of his Action.

If the Clerk is brought in at the Suit of A. upon Bail, this doth not hinder him from claiming his Privilege; Because he had no Opportunity of doing it before, and then it is absurd to say, That he shall not have Privilege against B. But if the Privilege had been waived as to the first Action it would have been waived as to the 2d also. 1. Salk. 2. pl. 3. Hill S. W. 3 B. R. Jones v. Bodiner. — And it is a Waiver in all other Actions commenced in that Term. Carth. 378. Bands v. Bodinner, S. C.

But if an Attorney of C. B. is brought into B. R. at the Suit of an Attorney there, which is an Escheppel to J. Gerard's Privilege, even in such Case in other Actions commenced against him in B. R. in the same Term, he shall be ousted of his Privilege; Because the Jurisdiction of B. R. was attached upon him in the first Action. Per Cur. Carth. 378. in the Case of Bands alias Jones v. Bodinner.

But Pasch. 7. Ann. where an Action was brought against an Attorney of C. B. who was in Custody of the Marshal of the King's Bench, at the Suit of another, and in this Action they declare against him In Custodia Marechalli, and the Defendant pleaded his Privilege as an Attorney of C. B. the Court directed that the Defendant should be removed by *Habeas Corpus* to the Common Pleas, and that an Action should be brought against him there. 11 Mod. 167, 168. Turton v. Prior.

8. Trespass against the Baron and Feme, the Baron cast Writ of Privilege for him and his Feme, because he was Servant of the Chancellor; Et per tot. Cur. it was disallowed. Br. Privilege, pl. 9. cites 34 H. 6. 25.

And the same Case was argued the same Year, fol. 35.

And there it was adjourned, and after the principal Case of the Baron and Feme was adjudged against the Defendant, and he awarded to answer, because the Feme shall not have the Privilege, and therefore Baron shall not. Ibid. — Br. Bille. pl. 2. cites S. C. — S. P. Toth. 217. cites 32 Eliz. Barkley v. Husley. — S. P. For her Attendance is not requisite in his Court, nor is she impleadable here in the Petty-Bag; and besides, where the Common Law and a private Custom, or Privilege encounter one another, the Common Law shall have the Preference; And therefore it is, That where an Action is brought against 2, one of them only having Privilege, his Privilege shall not be allowed. Lin. P. R. C. 290 — Carth. Carth. 457. S. C.

So in *Trespas* in B. R. against *Baron and Feme* for *Trespas* done by the *Feme*, the *Baron* prayed his *Privilege*, being an *Officer of the Exchequer*, and to this Purpose tendered to the Court his *Writ of Privilege*; But it was here disallowed; For the *Baron* is only joined for Conformity, and they cited the *Book of* --- H. 6. --- and *Lord Dyer* 307 a. accordingly; But the Court gave Day to hear Counsel. 2 Sid. 157. Pasch. 1659. Anon.

So in *Debt* against *A. and his Wife*, as *Executrix* to the *Debtor* &c. the *Husband* comes in upon the *Exigent*, and prays his *Privilege*, as *Servant to the Lord Keeper of the Great Seal*; But per Cur. he shall not have it, because the *Wife* was joined with him in this *Action*; and she cannot have any *Privilege*. Noy. 68. *Etherington v. Ashton & Ux.* — S. P. where a *Clerk in Chancery*, and his *Wife Executrix*, were sued in C. B. the *Privilege* was disallowed by all the *Justices*, because she could not have the *Privilege*, and therefore he could not. *Godb.* 10. pl. 13. Mich. 24 Eliz. *Pole's Case*. — And it is there said to be adjudged by the whole Court accordingly in 34 H. 6. 29. & 35 H. 6. 3. — D. 377. pl. 30. S. C. by Name of *Powel's Case*. — S. C. cited Vent. 299 in the *Case of Molin v. Cook & al.*

So where *A. Clerk to a Remembrancer* in the *Exchequer* had married *M. Widow*, and *Executrix of one J.* and brought *Action of Debt* by *Privilege of the Exchequer* against one for a *Debt due to the Testator*, because the Cause accrued for *Debt due to the Executrix*, no *Privilege* is grantable; per Cur. Sav. 20. pl. 49. Pasch. 24 Eliz. *Lowe's Case*.

So where she is returned *Cepi Corpus*; For she cannot be Prisoner at two Courts Simul & Semel. Ibid. — And a Man, who was outlawed, and went to

9. In *Trespas*, *Exigent* was awarded against the *Baron and Feme*, and she rendered herself to the *Sheriff*, and, as she was coming, she was arrested in *London* upon *Plaint* against her and her *Baron*, upon the *Custom of Feme sole Merchant*, of which the *Plaintiff* cannot have *Remedy at Common Law*; But *Quære* thereof; and the *Feme* notwithstanding this was dismissed; But per *Choke* in such *Case of the Custom*, where the *Party arrested* is in such *Plight* that he may make *Attorney in the Action in Bank*, he shall be remanded to *London*; But in this *Case* she came by *Redditi* se upon *Exigent*, and therefore ought to have the *Privilege*; For she cannot make *Attorney*. Br. *Privilege*, pl. 22. cites 9 E. 3. 4. 35.

Calais, and came back to sue his *Pardon*, and was arrested, he had his *Privilege*. Ibid. — So of one who is outlawed, and comes to sue *Writ of Error*, and is arrested, he shall have the *Privilege of the Court* where the *Outlawry* is, viz. of C. B. and the *Arrest* was in B. R. and yet the *Privilege* was allowed. Ibid.

10. A Man was arrested in L. and after came a *Latitat* out of B. R. by which he was arrested again, and the *Arrest* by the *Latitat* was discharged, because he was imprisoned before by the first *Arrest*, and he cannot be imprisoned in 2 Courts Simul & Semel. Br. *Privilege*, pl. 24. cites 9 E. 4. 47.

11. A Man brought *Debt in Bank*, and after brought *Action of Debt in London* for the same *Sum*, and arrested the *Defendant* there, and he came now by *Habeas Corpus*, and prayed to be discharged; Per *Yaxley*, the *Plaintiff* is nonsuited in the *Action* here in *Bank*; & per tot. Cur. this is not material, because he had Cause of *Privilege* at the Time of the *Action* commenced in *London*; Quod nota; But where it appears by *Examination* that the *Suit in Bank* was by *Covin*, there he shall not have *Privilege*; and where the *Plaintiff*, who has *Suit in Bank*, impleads the same *Defendant* in any other Court for this or other Cause, he shall make *Fine*; per *Fineux & Reade*. Br. *Privilege*, pl. 19. cites 24 H. 7. 6.

S. C. cited *Godb.* 10. pl. 13. Mich. 24 Eliz. in *Pole's Case*. But *Dyer* said, That the Reason was,

12. A Man brought *Action in Bank*, and at the *Pluries Capias* he and his *Feme* were arrested in a base Court coming towards *Westminster*; and because the *Baron* had *Privilege*, therefore his *Feme* shall be in the same Condition, and so both had *Privilege*; and yet the *Suit in the base Court* was for a *Debt of the Feme before the Coverture*; Quod nota. Br. *Privilege*, pl. 2. cites 27 H. 8. 20.

13. The *Defendant* appeared upon a *Subpoena*, and answered the *Plaintiff's Bill*, and after attended upon the *Lord Keeper* for a *Matter in Controversie* between him and one *Ellen Wryne*; and in the mean Time was arrested in *London* at the *Suit of one Anthony Brisket*, contrary to the *Order and Privilege of this Court*. It was ordered, That a *Subpoena of Privilege* be granted to the *Mayor and Sheriffs of London* for the *Discharge of the* said

said Arrest. Cary's Rep. 61. 2 Eliz. f. 58. Richard Dutton Plaintiff v. William Alersey Defendant.

14. If any *Officer, Clerk, or Attorney of any of the 4 Ordinary Courts*, who ought to be Attendant to the Court, *be arrested in London, or other Place, in Time of Attendance, he shall have a Writ of Privilege, with a Positive Superfedeas therein*, directing the Plaintiff quod Sequatur in Curia Ubi &c. si Voluerit, where he may have the Remedy of his Suit as well as elsewhere; In which Case no Procedendo shall be awarded to the inferior Court. *Otherwise it is where the Party arrested has Privilege by reason of Suit depending in the superior Court, by him or against him*, and this is the Cause only of his Privilege. Note the Diversity, by all the Justices and Prothonotaries of both Benches. D. 287. a. pl. 48. Hill. 12 El. Anon.

15. The Defendant got a Writ of Privilege as *Servant to the Lord Keeper*, and removed 2 several Suits against him by the Plaintiff in London; forasmuch as the *Lord Keeper* declared in open Court, That the Defendant is *not now his Servant*, therefore ordered, That the said 2 several Causes be remanded into London, and the Defendant not to be allowed the Privilege of this Court. Cary's Rep. 146. 21 Eliz. Warner and Clerke v. Maynard. Curf. Canc. 496. cap. 18. cites S. C.

16. An *Attorney at Law join'd with another in Action*, thereby to avoid a privileg'd Man in Chancery; the Suit was stay'd, and the Privilege allow'd. Toth. 220. cites 28 Eliz. fol. 247. Pepwell v. Goldsmiths London.

17. P. was *arrested by Process out of B. R. and after the Arrest procured himself to be made an Attorney of C. B.* and after he pleaded, *That Die impretationis Billie, he was an Attorney of C. B.* and pray'd his Privilege. The Question was, If the Privilege should be allow'd? for a Privilege which accrues pendente lite shall not be allow'd, and here the Plea is true, but there is special Matter to avoid it; And Ley Ch. J. demanded if he was *Attorney at the Time of the Bail put in*, that being the material Point; for 'till then no Writ can be put in, and by the putting in of Bail he is in Custodia Marechalli. 2 Roll. Rep. 432. Trin. 21 Jac. B. R. Goldborough v. Perryman.

18. Lord D. Tenant in Tail of a Forest rendring Rent, Reversion to the King, exhibited an *English Bill against a Clerk to the Register of the Chancery, to discover if such Lands were of the Forest*. Defendant pleaded the Privilege of the Chancery and the Letters Patents of the King, by which he granted to the Register to be sued in no other Court. And it was Ruled by all the Court, *That in this Case the Privilege shall not aid the Clerk*, but that he ought to answer over. And their Reason was, because the Reversion being in diverse other Things so privileges the Possession, that it is as the Possession of the King; and also the Privilege is granted to the Register himself, and not to his inferior Clerks. Litt. R. 97. Trin. 4 Car. in Scacc. Lord Derby v. a Clerk to the Register of the Chancery.

19. A Suit in Chancery was against several Defendants. *One of the Defendants died. The Survivors pleaded the Privilege of the Exchequer*. But because this Suit was joint at first against the Deceas'd and the others, and for any Thing appearing he had no Privilege in the Exchequer; so that the Court of Chancery being lawfully possessed of the Plea, his Death ought not to give any more Privilege to the other Defendants to draw the Cause from this Court than they should have had at the Beginning, or while he lived; and therefore his Lordship did adjudge the Defendants Plea to be insufficient, and ordered the Defendants to make a direct Answer to the Plaintiff's Bill in this Court. 1 Chan. R. 69, 70. 9 Car. 1. fol. 135. Lake v. Phillips.

20. The Defendant was arrested at the Plaintiff's Suit as he came about putting in his Answer, and imprison'd, and after several other Actions charged

charged upon him, were all *discharged*, it being done in the Breach of the Privilege of this Court. Chan. Rep. 92. 11 Car. Alsbury v. Troughton.

21. A Bill was brought, setting forth, That R. being arrested and imprison'd at the Suit of C. upon mean Process, and after *made an Escape*, and upon a fresh Pursuit being *retaken*, is in Custody again; But the said R. *making it appear* to this Court, *That he had a Cause depending here, and he attending the same, was arrested and detained*, contrary to the ancient Privilege of this Court; whereupon this Court ordered the Bailiff, who last took him, to be committed to the Fleet for refusing to discharge him. The Court ordered Meynel and Sterling Sheriffs of Middlesex to discharge the said R. out of Custody. The Sheriffs acquainting the Court, That the Case is as aforesaid, and that the said C. threatens to bring an Action of Escape against the Sheriffs, the Court again ordered the said Bailiff to be committed cloie Prisoner, and that the Sheriffs should forthwith discharge the said R. out of Custody, and that a Writ of Privilege be awarded in that Behalf; whereupon the Sheriffs discharged the said R. and thereupon the said C. brought his Action against the Sheriffs for the Escape, and would enforce the Sheriffs to pay the Debt, and so consequently invalidate and overthrow the ancient and undoubted Privilege of this Court. The Court ordered that the said Action against the Sheriffs, touching the Arrest and setting R. at Liberty be discharged, unless C. shew Cause. Whereupon C. offered several Reasons for Cause, but the Court disallow'd the same, and confirmed the 1st Order; and that the said Action be discharged, and all Proceedings at Law against the Sheriffs be stay'd. But the said C. insisted that his Debt is great, and if the said R. be under Protection of this Court, C. is like to lose it. The Court declared C. may, notwithstanding the former Orders, proceed against R. in order to the Satisfaction of his Debt, as he should see Cause. 1 Chan. Rep. 217, 218. 13 Car. 2. f. 677, 694. Meynel and Sterling v. Cooper.

22. The King's Attorney of the Marches in Wales brought his *Bill* there as Executor to another, and insisted to have his Privilege, because he was bound to give his Attendance there; But the Court said, He should not have it here, because he sued as Executor. Latch. 199. Ewer's Case.

23. The Privilege of Chancery belongs to the Lord Chancellor or Keeper; to all the Masters, Ministers, Officers, and *known Clerks* of the Courts; and to the *menial Servants* of the Chancellor or Keeper, and of the Masters, Ministers, and Officers; And they may, as the Case requires, be impleaded here, either as at Common Law in the Petty-Bag Office, or in a Way of Equity by English Bill. P. R. C. 284.

24. Persons who have Privilege of Chancery are *not to be sued elsewhere* than in this Court, either by Latin Plea in the Petty-Bag Office, or by English Bill, as the Case requires, *save in Cases where the Queen is immediately concerned*. P. R. C. 285.

25. A Defendant in Chancery refused to answer, because he was an *Inhabitant of the County Palatine of Lancaster*, but was over-ruled, the Plaintiffs being Ministers and Servants of this Court, and as such intitled to Privilege here. P. R. C. 286.

26. The Lord Chancellor Egerton declared, That no *Chapmen* Men is privileg'd against a Subpœna of this Court. And several Pleas by Officers there, as Register, Receiver &c. have been over-ruled. P. R. C. 291.

27. The Plaintiff as Debtor to the King, and *Treasurer of the Navy*, exhibited his Bill in the Exchequer. The Defendant *pleaded* his Privilege, as *one of the six Clerks in Chancery*, under the Great Seal. Hale Ch. B. and the Court held, That a general Privilege, as Debtor, will not hold against a special Privilege, but against a general Privilege it will. But a Privilege as *Accountant will hold against a special Privilege in another Court as Officer of the Court, or otherwise, tho' it be not alleg'd that he

* *Held 265*
Chancery v.
Lenthall.

has enter'd upon his Account. And in this Case the Plaintiff being Treasurer to the Navy, is Eo ipso an Accountant. Hard. 316. Mich. 14 Car. 2. in the Exchequer, Sir Geo. Carteret v. Sir John Mafflam.

28. The *Warden of the Fleet* moved for a Writ of Privilege sitting the Parliament, alleging that he was obliged to attend the House of Lords, and therefore ought to be privileg'd from Suits, and produced Precedents where Writs of the like Nature had been granted; and upon hearing Counsel of both Sides, the Court inclined to grant this Writ; but it afterwards appearing that he was sued for *Expenses*; and considering the ill Consequences that might happen, and thinking that it was in their Discretion whether to grant the Privilege upon Motion, or not (for they could not judicially take Notice of this Privilege of Parliament) the Court said he might plead it if he would, but they would not grant it upon Motion; or otherwise, if he thought his Privilege infringed by any Prosecution against him, he might complain to the House of Lords for Breach of Privilege. 2 Vent. 154. Pasch. 2 W. & M. C. B. The Warden of the Fleet's Case.

(G. 2) Allowed. How.

1. **I**N London, the Privilege shall not be allowed but upon Writ brought thereof, and not by Way of Plea; but in Bank he may plead it by Way of Plea. Br. Privilege, pl. 7. cites 20 H. 6. 30. An Attorney at C. B. being sued by Bill in F. R. the Court will not discharge him without pleading his Privilege. 2 Salk. 544. pl. 3. Hill. 8 W. 3 B. R. Lane v. Saltmarsh.

2. Thomas Younge Justice sent Bill in the Exchequer against the Clerk of the Hanaper upon his Account, and the Defendant cast Superedeas of the Privilege of the Chancery, because he was Clerk of the Chancery; and by all the Justices in the Exchequer Chamber, the Superedeas shall not be allowed; for every one who is accountant ought to be attendant and present, and there he shall be sued; for it is an Advantage to the King that he shall attend, and shall account; and Accountant may have Bill against his Debtor, and this is for the King's Advantage, Quod citius solvat Regi; and if Accountant be sued in C. B. they shall send Superedeas to surcease; and if he be sued in B. R. those of the Exchequer shall shew the * Record that he is Accountant &c. and shall not have Superedeas to the King; for the Pleas there are Coram Rege &c. and he shall be dismiss'd, and shall be sued in the Exchequer. Br. Privilege, pl. 25. cites 9 E. 4. 53. S. C. Cited 2 Brownl. 207. in Case of Guy v. Sir George Reynel ——— *An Accountant in the Exchequer to the King, was sued in B. R. and a Part of the Exchequer came into the Court, and found for Plaintiff.

accountants to the King, and that the Defendant was one, and prayed the Process of the Court of Exchequer, that the Suit might be stay'd; the Court demanded of the Secretary what the Course was in such Case, whether to grant it upon such bare Averment of the Baron, or that it ought to be pleaded and prayed by the Party; Upon his informing the Court that it had been usually allowed upon Plaintiff's Prayer, it was granted accordingly. Bar. Williams J. was strongly against it, and said that there are many Books wherein it was adjudg'd in Point that it ought to be upon the Party's Plea and Prayer; and that without this the Court cannot certainly know whether he be the same Party for whom the Privilege is pray'd. 2 Bull. 36. Mich. 10. Jac. Anon.

3. A Serjeant at Law was Plaintiff in the Admiralty, and the Defendant there moved for a Prohibition in B. R. It was pray'd that B. R. would not grant it, but would allow the Serjeant his Privilege of its being mov'd for in C. B. But the Court doubted if Privilege should be granted in Prohibition; but Ex assensu Partium it was ordered that the Plaintiff here sue his Prohibition in C. B. for the Speed of the poor Plaintiff. But upon moving it there, the C. B. refus'd to grant Prohibition, and to

it was mov'd again in B. R. And all the Court held that Prohibitions are grantable *Ex Debito Juititiæ*. Sid. 65. pl. 38. Mich. 13 Car. 2. Serjeant Morton's Case.

4. An *Attorney of C. B.* was arrested in the *Palace-Yard* not far from the *Hall-Gate*, sitting the Court, at the Suit of an *Attorney of B. R.* and both the Officer and the Prisoner were brought into the Court of C. B. and the Officer was committed to the Fleet, and the other was sent up to B. R. who being informed of the Case, viz. That the *Attorney* arrested was indebted to him in 200 l. the Court of B. R. discharged the other upon common Bail. 2 Mod. 181. Hill. 28 & 29 Car. 2. *Long's Case*.

5. Clerks of the Court must have a *Certificate from the Master of the Rolls*, or *Office where they write*, before a Writ of Privilege be granted them. P. R. C. 285.

6. H. came to confess an *Indictment*; and the Court held that he had no Privilege *Eundo & Redeundo*, because there was no *Treaty* against him. 2 Salk. 544. pl. 6. Hill. 2 Ann. B. R. Anon.

7. Menial Servants of a Master, Minister, or Officer of the Court, must make first *Affidavit* that he is so: The Writ for him must first be presented unto and signed by the Lord Keeper, and the *Affidavit* must be at the same Time annexed to it. And such Writ shall continue in Force no longer than he continues Menial Servant. P. R. C. 285.

8. If a necessary Officer, such as the Chancery cannot be without, as a Register, Master in Chancery, or such like, be in Prison upon *Mesne Process*, the Lord Chancellor may enlarge him: But if he be in Execution for Debt or Damages, he shall have no Privilege; for the Plaintiff would be without Remedy if the Party be once set at Liberty. But this is to be understood with some Limitation; for where, by Order of this Court, one was discharged by Superfedeas, and the Plaintiff brought an Action of Escape against the Sheriff, this Court ordered him to discharge the Action, and that he should stay all Proceedings against the Sheriff. P. R. C. 286, 287.

(H) In what Actions the Privilege shall be granted.
Of the Chancery. [And other Courts.]

A Clerk of Chancery shall not have his Privilege, unless he
1. THE Officers and Ministers of the Chancery shall not be impleaded out of the Chancery in any Plea, unless it be in Plaint of Land, or of Treason or Felony. And if they are they shall have their Privilege. 3 D. 6. 30.

Immes Writ to B. R. because B. R. is the Superior Court, and if B. R. be first possess'd of the Action, the Privilege is not grantable. Per tot. Cur. Mo. 753. pl. 1038. Mich. 2 Jac. Anon.

Hob. 177. pl. 201. Gage's Case. — Gilb. Hist. C. B. 170. cites S. C. For in such Case Executors and Administrators represent common Persons who have not that Privilege.
2. An Attorney of Bank being an Administrator, cannot sue another as Administrator by Writ of Privilege, because he sues *En Auter Droit*, but ought to sue by Writ original. Hobart's Reports 239. Gage's Case adjudged.

Indebitatus Assumpsit for 100 l. against the Defendant
3. So an Attorney being an Executor or Administrator, cannot be sued as Executor or Administrator by Bill, as Attornies are used to be sued, but ought to be sued by original Writ. Hobart's Reports 139.

as Executor, he pleaded in Abatement that he was an Attorney of C. B. and pray'd his Privilege, but was ruled to answer over; for his Privilege extends only to Actions brought against him in his own Right. 1. Salk.

4. It was doubted if Privilege should be granted in *Prohibitions*. Sid. 65. pl. 38. Mich. 13 Car. 2. in Serjeant Morton's Case.

(I) *At what Time they shall pray their Privilege.*
[And what shall be an admitting the Jurisdiction of a Court.]

7. After Imparance to another Term, in the other Term he shall not have the Privilege of the Chancery by Writ. 20 H. 6. 33.

* affirmed the Jurisdiction of the Court; Quod Nota by Award. Br. Privilege, pl. 15. cites S. C. — Gibb Hist. of C. B. 172. cites 22 H. 6. 71. [But (71) seems to be mis-printed for (7)] and says, that the true reason seems to be, that by this Imparlanee the Defendant had confined himself to take Advantage only of the Default in the Writ and Court; But had he obtained from the Court a General Special Imparlanee, viz. *Salvis omnibus & Omnimodis Advantagiis & Exceptionibus*, he might then have pleaded his Privilege; For that is not to oust the Court of its Jurisdiction, but is a Privilege, which each Court allows to the Officers of the other to be sued in their own Court only, and the modern Authorities are express, that Privilege may be pleaded after a general special Imparlanee. — * S. P. P. R. C. 286.

Debt in B. R. against an Attorney of C. B. who *imparled* specially, *Salvis sibi omnibus Exceptionibus*, &c. and afterwards pleaded his Privilege. The Plaintiff demurred; Windham and Twitden held, that this Plea was receivable upon this Imparlanee; but adjournatur. And the next Term a Respondeas Oulter was awarded for want of Averment in the Plea; But nothing further was said of the special Matter. Lev. 54. Hill. 13 & 14 Car. 2. B. R. Neave v. Nelson. — But Mich. 32 Car. 2. B. R. It was held per Cur. that Plea of Privilege comes too late after Imparlanee. 2 Show. 145. Jenkes v. Lyon S. P. Raym. 34. Barrington v. Venables.

In Debt upon Bond, the Defendant in propria Persona imparled, viz. *Salvis sibi omnibus & Omnimodis Exceptionibus & Advantagiis tam ad Jurisdictionem Curie quam ad Breve &c.* and then pleaded his Privilege as one of the Clerks of the Exchequer. Exception was taken thereto, that such Imparlanee *Ad Jurisdictionem Curie* never was seen. And the Court said, that such Imparlanee ought not to have been granted by a Prothonotary, and thereupon awarded a Respondeas Oulter; But they relolved, that if the Imparlanee had been as in *Clapham's Case*, Hard 365. before the Plea, it had been good. Lutw. 42 to 46. Pasch. 13 W. 3. C. B. Wentworth v. Squibb. — *Trespass against divers; all imparled except one*, and after *at the Day*, the one, who did not imparl, appeared by Attorney and imparled; and after *Sedente Curia* cast Superedeas of the Chancery, because he was Servant of the Chancellor; and it was not adjudged whether he shall have the Privilege or not, because others are joined. Br. Privilege, pl. 7. cites 20 H. 6. 32.

A sued B in an Action of Battery in *London*. B. removes it by *Habeas Corpus* to the King's-Bench, and the Term after prays an Imparlanee, and before the end of the Term prays the Privilege of the Exchequer; The Puisse Baron comes *with the Red Book*, and shews, that B. is Escheator, and so an Accomptant to the King, and at length Privilege was allowed. Noy. 40. Walrend v. Winroll.

Fol. 276.

8. So, after Imparlanee to another Day in the same Term, he shall not have the Privilege by Writ. 20 H. 6. 32. b. Dubitatur.

9. After Imparlanee in B. R. by a Servant of one of the Examiners in Chancery being Defendant, if he pleads his Privilege of the Chancery, he shall not have it. M. 1651. between *Fish and Kenned*, per Curiam adjudged. Intratur. Tr. 1651. Rot. 1260.

In *Trespass*, at the *Exigent* it is admitted,

10. At the Exigent returned upon Process, Defendant shall have the Privilege of the Chancery. 20 H. 6. 26.

it is admitted, that the Defendant may have Privilege of B. R. at this time; but in Debt he shall not have Privilege of B. R. For Debt does not lie there. Br. Privilege, pl. 40. cites 10 E. 4. 4.

A Clerk of the Chancery was sued in B. R. and Process continued to the Exigent; the Clerk sued a *Superedeas* to the Sheriff, *Quia Improvide*, and after sued a Writ of Privilege directed to the Justices of the Bench, requiring them to surcease; and upon a long Debate his Privilege was disallowed, and he driven to answer; For the Court was lawfully misled of the Plea by the Defendant's own Act, in as much as he had, by the *Superedeas*, affirmed the Jurisdiction of the Court; for every *Superedeas Quia Improvide* recites an Appearance in Court of the Defendant by Attorney, and shews his Name; so that this is his own Default. But if he had not sued such Writ, notwithstanding the Exigent, the Privilege should have been allowed, and of this there were Precedents shewn, and then after the Writ of Privilege comes to the Justices, they ought to make a special *Superedeas* of the Outlawry to the Sheriff, reciting the Privilege. Et sic nota diversitatem bene. D. 35. pl. 18. Pasch. 28 & 29 H. 8. Anon.

11. At the Exigent returned, and after Mainprize found upon it, Defendant shall not have the Privilege of the Chancery, because by the *Hamprize* he has affirmed the Jurisdiction. 20 H. 6. 26. Quare.

12. After Issue when the Inquest is ready at the Bar, if an absolute *Superedeas* comes out of the Chancery, certifying that Defendant is a Clerk there, and commands them to surcease, it shall be allowed. 11 H. 6. 8.

13. He, who is arrested *mesne* between the Teste of the Original and the Return shall have the Privilege, if the Writ be returned after; For this shall have Relation to the Teste. Br. Privilege, pl. 4. cites 9 H. 6. 7.

14. *Trespass* against the Baron and Feme, the Baron cast Writ of Privilege for him and his Feme, because he was Servant to the Chancellor; and it was alleged, that pending the Suit the Chancellor was removed from his Office; but this was not regarded; For if he had once a good Cause of Privilege

Privilege, the Act of a 3d Person shall not prejudice him. Br. Privilege, pl. 9. cites 34 H. 6. 29.

15. A Man was impleaded *at London long before the Term*, and was arrested, and found Mainprise, and *at the Term after an Original and Suit was taken against the Defendant at Westminster in C. B.* and the Plaintiff declared, and the Defendant impleaded, and sued Writ of Privilege, and had the Privilege, notwithstanding that the Suit in L. was the Prior Suit, because it was not adjudg'd by Recovery, nor Condemnation, but is pending yet in L. not discussed; but if he had been *condemned in L.* he should not have the Privilege; Quod Nota Diversity. Br. Privilege, pl. 36. cites 5 E. 4. 44.

If a Man is *condemned in London in the Time of Vacation, and has Execution in the Term*, when the Defendant has Cause of Privilege,

yet this shall not diminish the Execution. Br. Privilege, pl. 37. cites 2 E. 4. 8.

16. Littleton Justice, said, that one *appeared by Capi Corpus and found Mainprise, and before the Day* which he had, he *was arrested in London, and was brought into B. R. by Corpus cum Causa*, at which Day the Plaintiff was Non-suited, and the Defendant dismissed of the Serjeant; For the Plaintiff, upon which he was arrested, *was taken after the Imprisonment in Bank.* Br. Privilege, pl. 24. cites 9 E. 4. 47.

But if the Plaintiff and Arrest in L. had been before the Imprisonment here, he should have

been remitted. Ibid.

17. Any Plea of Privilege is good to a Declaration against one *in Custodia Mar.* if he be *there wrongfully*; As if an Attorney of C. B. be arrested in a Latitat, and is *in Custody* of the Marshal for want of Bail, or suppose he *puts in Bail*, it shall not hinder him of pleading his Privilege; because he can't plead 'till he puts in Bail, if he be not in actual Custody; and if we give Judgment, it must be for the Defendant. Per Holt Ch. J. 12 Mod. 535, 536. Trin. 13 W. 3. B. R. Wilbraham v. Lownds.

(K) Proceedings, and Pleadings.

1. BILL was brought against the Custos Brevium, because the Sheriff of S. returned a Capias Utlagatum, which the said Defendant embezzel'd; And Exception was taken, because he is not named Now Custos; & non Allocatur, because it appears by the Return that he is yet Custos, and then Bill lies. And another Exception was taken, because he embezzel'd it at D. in London, and that Bill lies not but of an Act done in the same County where the Court is. And Skrene offer'd to demur, because the Bill lies by his Pretence. Br. Bille, pl. 4. cites 7 H. 4. 5.

2. Bill of Debt was such, viz. J. S. petit de W. M. uno Alternat. de &c. and the Bill was challeng'd because it should be unum Alternatum &c. and the Bill awarded good. Brook says, Quære what is intended; for it is ill reported. Br. Bill. pl. 8. cites 7 H. 6. 43.

3. In Debt the Defendant cast Superfedeas of Privilege of the Chancery, and said, That the Day of the Writ purchased he was *menial Servant* of E. Bishop of B. Chancellor of England, and yet is; therefore he demanded Judgment if the Court will take Conusance; and the Plaintiff said, That the Defendant was not Servant of the Chancellor the Day of the Writ purchased, nor ever after; And for Want of Defence demanded Judgment; and the Defendant demanded Judgment, because the King recorded that he is Servant of the Chancellor, Ut Accepimus; And yet because the Plaintiff had traversed the Defence directly, to which he answered nothing, therefore it was awarded, That the Defendant answer without the Privilege; Quod nota. Br. Privilege, pl. 13. cites 21 H. 6. 20.

4. The Plaintiff said, That whereas it is contained in the *Writ*, that he is *menial Servant* of R. S. Burchier of the Chancery, he is *not menial Servant, Priest*; and the other e contra. Br. Privilege, pl. 17. cites 22 H. 6. 38.

5. In Trespass the Defendant cast a Superfedeas of the Privilege of the Exchequer, and *alleg'd the Usage, that the Officers there, nor their Servants &c. have not been impleaded elsewhere* but in the Exchequer, and that he is Servant of an Officer &c. The Plaintiff said, That the Officers and their Servants attending at the Office have ued to have such Privileges, and that the Defendant is Servant in Husbandry in the Country, Abique hoc that he is Attendant &c. And the Opinion of Prisot was, That this is a * good Issue; which none deny'd but Laken, who was for the Defendant, and so he travers'd more than was tender'd; But quære if he ought not to traverse *Abique that the Privilege extends to all Servants*, Prout &c. Br. Traverse per &c. pl. 27. cites 34 H. 6. 15.

* For per Prisot the Prescription is not alleg'd for All Servants, therefore he may well say as here, and shew that such Servants shall have Privilege, and the others not, and traverse as here, without traversing the Prescription. Br. Privilege, pl. 8. cites S. C.— Br. Prescription, pl. 7. cites S. C.

6. Bill against a Sheriff in the Exchequer upon his Account shall abate if he be not named Sheriff, et ratione Officii sui scilicet versus J. O. quondam Vicecomitem N. qui præsens hic in Curia super compoto suo, ratione Officii sui. Br. Bille, pl. 42. cites 37 H. 6. 39.

7. If Bill of Debt is brought by an Attorney upon the Privilege, the Defendant may say, That he is not named Attorney in the Bill, Judgment of the Bill, and a good Plea; Contra, if he sues by Writ. Note the Diversity. Br. Brief, pl. 342. cites 3 E. 4. 26.

8. If one demands Privilege as Warden of the Fleet, because he is Officer of the Court; it suffices if he be named Warden, tho' he does not shew How he is Warden, As in Jure uxoris, or by Lease for Years &c. but it suffices by Name of Warden only. Br. Privilege, pl. 23. cites 9 E. 4. 40.

9. In Trespass the Defendant pleaded Privilege as Servant of a Filazer, and Issue was taken, If the Party was Servant Attendant on the Filazer, or not, at the Time &c. And so see that the Issue is peremptory; for it is triable per Pais. Br. Peremptory, pl. 48. cites 10 E. 4. 4.

10. An Attorney of C. B. brought an Action there against a Stranger by Attachment of Privilege, and had a Verdict; But upon a Writ of Error brought, the Judgment was reversed for want of finding Pledges De Prosequendo, tho' several Precedents were shewn, that an Attorney need not, because he is supposed always present in Court. And the Words of Si Querens fecerit te Securum de Clamore suo &c. were wanting in the Attachment of Privilege. D. 288. pl. 53. Pasch. 12 Eliz. Floreman v. Bygot.

11. It was agreed, That all Proceedings in an inferior Court after a Writ of Privilege delivered out of this Court are void, & Coram non Judice; and if they award Execution, this Court will discharge the Party. 2 Brownl. 101. Mich. 9 Jac. Anon.

12. Error was brought of a Judgment in C. B. in Debt on an Arbitration Bond by an Attorney of C. B. and Judgment upon Demurrer given for the Defendant, Quod querens nil Capiat per Breve; whereas the Action was brought by Bill of Privilege, and not by an Original Writ; and therefore it ought to be Nil Capiat per Billam. This was held a manifest Error, because it was in the Judgment, which is the Act of the Court, and so not to be accounted the Misprision of the Clerk. Cro. C. 580. Pasch. 16 Car. B. R. Raymond v. Bembridge.

13. In Assumpsit &c. the Defendant pleaded his Privilege as Auditor of the Exchequer, in these Words, sc. That the Barons of the Exchequer, their Clerks, nor other Officers of the Exchequer, are not to be impleaded elsewhere. The Plaintiff demurred to this Plea, 1st, Because the Privilege was pleaded in the Negative, for 'tis, that they are not to be impleaded

Hard. 164. S. C. by the Name of Barrington's Case And there the

pleaded elsewhere, without shewing that they have been used to be sued there. 2dly, 'Tis too general to say, That the Barons and their Clerks are not to be sued elsewhere; for that doth not prove but that one of their Clerks may be sued elsewhere; And this was held ill according to the Exception. It was intited, That there was a Diversity between inferior Courts and the Courts of Westminster; that tho' Privilege of inferior Courts must be pleaded precisely, yet Privilege of the Exchequer, which is one of the 4 Great Courts, need not, the Customs of those Courts being Laws whereof all other Courts take Notice without pleading them. But Per Cur. Plea to the Jurisdiction must be precise. 2 Sid. 164. Hill. 1659. B. R. Foster v. Barrington.

Plea has the Word (Omnes) viz. That all the Barons &c. And there Exception was likewise taken for not averring his Plea as he ought, because it is issuable whether he is

the same Person who is Auditor there; And to this Opinion the Court seemed to incline; but the Plaintiff's Council said, That the Precedents in the Exchequer were without any such Averment; And they made a Difference betwixt the Officers or Clerks of Courts, who are upon Record there, and their Servants, who are not. Et Adjournatur. — In Debt upon an Obligation brought against the Defendant, he pleaded the Privilege of the Exchequer; And it was said by Mr. Justice (John) Powel, That the Defendant needed not to have pleaded it, but that it was to be *allow'd upon producing the Red Book of the Exchequer*. Lutw. 46. Pasch. 13 W. 3. in the Case of Wentworth v. Squibb.

The Plea, that omnes Attornati of C. B. ought to be impleaded there, and not elsewhere, was held ill, and a Respondens Outlier awarded. Lutw. 639. Pasch. 12 W. 3. Canfield v. Warren.

14. The Custom of C. B. concerning Privilege was certified to B. R. by the Secundaries, and therefore was refus'd; for it ought to be certified by the Prothonotaries, Sid. 65. pl. 38. Mich. 13 Car. 2. Serjeant Morton's Case.

15. An Information was exhibited against the *Custos Brevium* of B. R. for Abuses and Misdemeanors in his Office. He refus'd at first to appear in Person, but would have appeared by Attorney. The Opinion of the Court was, that he *cannot appear by Attorney*, because he is an Officer of the Court, and presumed to be always present. It was agreed that no Process should issue against him, but that *upon the reading the Information, if he doth not appear Judgment shall be given* against him. Sid. 134. pl. 8. Pasch. 15 Car. 2. B. R. The King v. Pager.

But in Trespass against an Attorney of C. B. he pleaded *his Privilege per Attornatum*. The Plaintiff demurr'd, because he ought to

have pleaded it in Propria persona; for pleading it by Attorney destroys the very Reason of his Privilege, which is his attending the Court in Person; but the Opinion of the Court was, that an Attorney may plead his Privilege by an Attorney, and no Inconvenience follows it; for he may be sick or have Business in another Court, which he must necessarily attend. It is true the Precedents are both Ways. The Plea was allowed Nil. Sty. 413. Hill. 1654. Higgs v. Harrison.

16. In Debt upon an Escape after Execution, the Defendant appeared, Et defendit vim & injuriam quando &c. and impar'd specially, saying to himself all Advantages and Exceptions Quoad Billam præd. and whether after such Imparance he must be allow'd his Privilege as Marshal of B. R.? The Court held, That after such Defence Privilege may be allowed; for it is not a full Defence, nor does he go about to oust the Court of Jurisdiction, but only claims his Privilege. Likewise after a special Imparance of *Salvis omnibus* Advantagiis & Exceptionibus, a Man shall have his Privilege; but if the Imparance be *special Quoad Billam præd seu Narrationem*, it shall not be extended farther; and after such Imparance Privilege is not allowable, as appears 22 H. 6. 7. 9 E. 4. 53. But upon Defendant's Prayer it was adjourned. Hard. 365. Pasch. 16 Car. 2. in the Exchequer, Clapham v. Sir J. Lenthall.

17. The Privilege of Chancery was pleaded by Way of Prescription; and upon Demurrer it was held ill. 1st. Because he did not conclude his Plea with *Et hoc paratus est verificare*. And 2dly. *No Place was alleg'd*; for they are * Matters of Fact, and triable. 1 Vent. 264. Mich. 26 Car. 2. B. R. Fawkenor v. Annis.

In Indebitatus the Defendant pleaded Custom of Chancery,

that all Pleas concerning the Chancellor, and any the Clerks of the Chancery, ought to be pleaded and determined *in Curia Cancellarii*, and not elsewhere, and avers he is a Clerk of the Inrolment Office, Under now recorded

Curia cognoscere vult, but not saying *Prout patet per Recordum*, nor where the Chancery is; which per Curiam is ill, and as to the Chancellor, it is void; However, because he cannot be Judge and Party, a *Respondens Ouster* was awarded, and it should be only that they ought to be impleaded, without saying, to be determined there; for Issues between Chancery-men are triable at Common Law, and the Plea must be averr'd, as was adjudged in *Levington's Case*. 3 Keb. 352. Mich. 22 Car. 2. *Fawkener v. Annis*.—All Proceedings in the Petty-Bag Office in Chancery, by or against any Minister of this Court for any Matter or Thing determinable at Common Law, are to be pleaded to *Issue as at Common Law*; and the Record thereof to be delivered *Per manus Cancellarii* into B.R. or C.B. at the Election of the Plaintiff. And after Trial had, the Record shall be remanded into this Court, and Judgment shall be given here. P. R. C. 291. —* Per Cur. Contra, that it is a Matter of Law, and not triable per Pais, nor traversable. 1 Salk. 30 Trin. 7 W. 3. B. R. *Kirkham v. Wheeler*.—2 Salk. 545. S. C. and P.

Skin. 582. 18. In Case against an Attorney he pleaded his Privilege thus, viz. S. C. says the Defendant pleaded his Privilege in this Manner, viz. *Et prædict. Def. dicit, without saying Venit & dicit, or making any Defence; where Dicit without Venit might be Ore tenus &c. but Non Allocatur, he being in Custodia Mar. and before another Day of Continuance*; but if it was at another Day of Continuance after the Day of Appearance, it ought to be *Venit & dicit*; but for the Want of Defence the Court did not seem to regard it; and in the Case of *Beckwith and Whetley* this Term, where the Defendant pleaded his Privilege as Attorney of C. B. and made no Defence Holt Ch. J. said it was a Chip in Porridge Skin. 582. Trin. 7 W. 3. B. R. *Stevens and Squire*.—And Holt Ch. J. said in this Case, that if a Prothonotary or other who is a *Person privileged by Record*, pleads his Privilege, and brings a *Writ of Privilege* attesting it, that this is conclusive, and the Plaintiff may not traverse it, but otherwise it is of a Clerk or Servant to such Person so privileged. Skin. 582. S. C.

* Per Cur. *Venit* is no Part of the Plea, but *Dicit* begins the Plea. The *Dicit* alone shews him to be in Court; and here it appears that he is in *Custodia*. 2 Salk. 544. pl. 2. Trin. 7 W. 3. B. R. *Stevens v. Arthur*, seems to be S. C.

To an *Actio qui tam* &c. the Defendant pleaded that he is an Attorney of the Court of C. B. and that Attornies of C. B. are not suable elsewhere. The Plaintiff demurr'd. 1st. Because this Plea is only in the Negative, and no Jurisdiction is given to any other Court. 2dly, Because there is no Defence by *Venit* but *Dicit* only. Per Cur. As to the Plea being in the Negative, it is well enough; for the Privilege is not traversable and triable per pais, but a Matter of Law of which we take Notice; and *Venit & Dicit* only are sufficient Defence in this Case. 2 Salk. 545. Trin. 7 W. 3. B. R. *Kirkham v. Wheeler*.

If he is actually in Custody, he is liable to all Actions, but if he be here only upon Bail, he may plead his Privilege; for the Sheriff cannot take Notice of his Privilege, so that he must give Bail. Per Holt Ch. J. Salk. 1. pl. 1. S. C.

19. A privileged Person in the Common Bench may be in Custody of the Marshal; for he may either waive or misplead his Privilege; and if he be actually in Custody, and it appears so by Pleading, he cannot have his Privilege. 12 Mod. 102. Mich. 8 W. 3. *Duncomb v. Church*.

20. And if one plead an exempt Jurisdiction from all the Courts of Westminster, and not to be sued but in such particular Courts and Franchises, there you must shew that they have a Jurisdiction of the Matter, and that the Cause arises within their Jurisdiction. Special Imparlanee should not be allowed without the Leave of the Court and Consent of the Parties. 12 Mod. 102. *Duncomb v. Church*.

21. Defendant pleaded that he is one of the Attornies of the Court of B. R. without saying that he was at the Time of the Writ purchased, and
a Re-

a Respondeas Outter was awarded. 1 Salk. 1. Mich. 8 W. 3. B. R. Pease v. Parsons.

22. Defendant pleaded that he was an *Attorney* of the C. B. and ought - Mod. 97; not to be sued elsewhere without his Consent; the Plaintiff replied, S. C. that he *did consent &c. but laid no Venue where*; and therefore bad. Per Cur. 1 Salk. 4. Mich. 1 Ann. B. R. Ode v. Norecliffe.

23. The Defendant *pleaded Privilege of C. B. in Abatement, without concluding to the Record*. Holt said he need not do it, but he may leave Plaintiff at Liberty to reply, and deny his being a Person privileged there, which Plaintiff can't do if Defendant conclude to the Record, and his not saying *Prout patet* is no good Cause of a general Demurrer, and upon Prout patet per Recordum, there shall go a Certiorari to certify the Record; and if they produce one and shew that they have Privilege, the Plaintiff is eltopp'd. 7 Mod. 106. Mich. 1 Ann. in B. R. Clifton and Swezeland.

24. In Debt upon Bond brought in B. R. the Defendant *pleaded his Privilege as Attorney of the Court of C. B. &c. and that there is a Custom in that Court, that no Attorney of this Court shall be compell'd to answer by Original Writ, unless he is forejudged*. The Plaintiff replied, *that for five Years last past, before the Original filed, the Defendant had withdrawn himself from the Office and Practice of an Attorney*. Upon a Demurrer to this Replication, it was objected, 1st. Against the Plea, that the Defendant did not set forth that he had any Clients, whose Suits he prosecuted or defended; for the Reason why an Attorney should have his Privilege is, that he might be attendant on the Business of his Clients; and when the Reason ceases, the Privilege ceases. 2dly. That he had alleged this Custom *In Fieri*, and not *In Facto*; for it is that an Attorney should not be compell'd to answer &c. whereas he should have gone on and alleged, *Nec a tempore quo &c.* For Usage in Fact is essential to every Custom, Compelli consuevit. But the Opinion of the Court was, as to the first Objection, That the Plea prima facie was good, and not avoided by the Replication, and that as long as the Defendant is an Attorney upon Record, he ought to have his Privilege. And as to the 2d Objection, it was said, the Court would take Notice of the Privilege of Attornies of the Court, and therefore the Custom need not to be so strictly alleged as other Customs. And Judgment was given for the Defendant. 2 Lutw. 1664. Hill. 2 Ann. C. B. Routh v. Weddell.

It was mov'd that the Defendant should put in Special Bail, he being an Attorney at large, and having discontinued his Practice; but the Court said, that *Attornies at large* have the same Privilege with the Clerks of the Court, and are to appear *De Die in Diem*. And they were not satisfied that he had discontinued his Practice.

Vent. 1. Mich. 20 Car. 2. B. R. Sir John How

25. An *Attorney of C. B. being sued in B. R. pleaded his Privilege*. Plaintiff demurr'd specially, because he did *not conclude with a Profer hic in Curia* of a Writ of Privilege, testifying his being an Attorney &c. Per Holt Ch. J. The Difference is, if the Privilege of an Attorney be pleaded with a Writ, the Defendant cannot be denied to be an Attorney; but if without he may, and then a Certiorari shall be awarded to certify whether he be an Attorney or not. 2 Salk. 545. Trin. 2 Ann. B. R. Dillon v. Harper.

To a Plea that he was an Attorney of C. B. it was objected on Demurrer, That he ought to produce his Writ, and conclude

with a *Prout pater per Recordum*; and also that he laid no Venue, alleging no Place where he was Attorney, nor where the Court of C. B. sits. Et per Cur. viz. Holt Ch. J. to which the rest assented, An Attorney may plead Privilege with a Profer of his Writ, if he will, or with an Exemplification of the Record of his Admission, or he may plead it as he does here, and it is well enough; for so are the Precedent, and the Plaintiff may reply *Nul tiel Record* 2dly. There was no Need of a Venue to try where he was Attorney, for it being a Matter concerning his Person, was triable where the Writ is brought. As to the 3d. He would shew how that ever came to be allowed; for that this Court sends Writs to the Ch. J. of the C. B. by that Name; and unless where this is held to be Part of the Description of a Record, it can never be necessary. 2 Salk. 545. Scawen v. Garret.

26. The Defendant *pleaded in Abatement, that Tempore quo Memoria non extat, all the Clerks of the Queen's Court of Exchequer were privileged from being sued elsewhere than in that Court; and that the Defendant was*

Clerk to R. P. uno Baron. de Scaccario nostro pradiſto. Upon Demurrer the Court held, That there were *two Ways of pleading Privilege*; one is *to go to Iſſue*, and if the Party is an Officer on Record, *to ſhew it by producing the Record*; if he is no Officer of Record, but attendant on one of the Barons, that muſt of Neceſſity be tried by a Jury, becauſe the Court of Exchequer, as a Court, cannot take Notice of it any more than we. The other Way is, *if he be an Officer on Record*, then *to produce a Writ of Privilege at the Time of the Plea pleaded*, and then no Iſſue can be join'd upon it; but here the Cuſtom is ill pleaded; for *Tempore quo non extat Memoria* is Nonſenſe, and it ſhould be *Cujus contrarii Memoria non &c.* But he having ſhew'd that he is one of the Clerks of a Baron, the Court ask'd whether they ought not to take Notice that he ought to have Privilege? But it being answer'd, That he did *not aver that he was Clerk to one of the Barons of the Queen's Exchequer*, but *De Scaccario nostro*, a *Reſpondeas Oulter* was awarded. 6 Mod. 305. Mich 3 Ann. B. R. Phipps v. Jackson.

27. If any who have Privilege of Chancery be arreſted in a civil Plea by the Proceſs of any other Court, he may have a *Writ of Privilege*, containing an absolute Superſedeas, and requiring the Plaintiff, *Quod ſequatur in Curia Ubi &c. ſi voluerit.* P. R. C. 284.

28. Privileged Perſons have their *Writs ſealed without Fees.* P. R. C. 285.

For more of Privilege in General, See *Arreſt, Attorney, Parliament, Peers*, and other proper Titles.

Privy.

(A.) The ſeveral Sorts of Privities and Privies, and of what they may take Advantage.

1. **P**rivity of Blood ſhall not be between two of *Half-blood.* Br. Entre Cong. pl. 27. cites 21 E. 3. 1. 2.

2. *Treſpaſs againſt two*, and the one appears firſt, and the Plaintiff counts, and after the other Defendant appears, and the Plaintiff counts of another Day, and yet he ſhall not take Advantage of the Count affirmed by his Companion; contrary of Plea to the Writ, Release, Diſcontinuance &c. For he is Privy to the Writ, but not to the Count. Br. Treſpaſs, pl. 56. cites 46 E. 3. 25.

3. There is no Privy between the Incumbent of the Biſhop who is collated by Laſe, and the Biſhop, as there is between the Maſter and Servant. Br. Incumbent, pl. 12. cites 16 H. 7. 6.

S. C. cited per Jones J. Jo. 32. in Caſe of Godfrey v. Wade. — There are three other Sorts of Privities, viz. in reſpect of

4. There are three Sorts of Privities, viz. Privy in *Eſtate*, in *Blood*, and in *Law*. Privies in *Blood* are intended of Privies in Blood inheritable, and this is in three Manners, viz. *inheritable as General Heir*, or as *Special Heir*, or as *General and Special Heir*. Privies in *Eſtate* are as *Jointenants*, *Baron and Feme*, *Donor and Donee*, *Leſſor and Leſſee* &c. Privies in *Law* are when the Law without Blood or Privity of Eſtate caſts the Land upon one, or makes his Entry lawful as Lord by *Eſcheat*, Lord that enters for *Mortmain*, Lord of *Villein* &c. 8 Rep. 42. b. Hill 45 Eliz. Whittingham's Caſe.

Eſtate only, *Contract only*, *Eſtate and Contract* together. Privity of *Eſtate* is, As if the Leſſor grants over his *Reverſion*, (or if the *Reverſion eſcheat*) Now between the Grantee (or the Lord by *Eſcheat*) and the Leſſee, there

there is Privy in Estate only. So between the *Lessor and Assignee of Lessee*; For no Contract was made between them. Privy of Contract only, is personal Privy, and extends only to the Person of the Lessor, and to the Person of the Lessee, as in the principal Case when the Lessee assigned over his Interest, notwithstanding his Assignment the Privy of the Contract remained between them, though Privy of the Estate be removed by the Act of the Lessee himself; and the reason of this is, first, because the Lessee himself shall not prevent by his own Act such Remedy which the Lessor had against him by his own Contract, but when the Lessor granted over his Reversion, there, against his own Grant he cannot have Remedy; because he has granted the Reversion to the other, to which the Rent is incident. 2dly, The Lessee may grant the Term to a poor Man, who shall not be able to manure the Land, and who will by Indigence, or for Malice permit it to lie fresh, and then the Lessor shall be without Remedy, either by Distress, or by Action of Debt, which shall be inconvenient, and will concern in Effect every Man, (because for the most part every Man is a Lessor, or a Lessee;) and for those two Reasons all the Cases of Entry by Tort, Eviction, Suspension, and Apportionment of the Rent are answered; For in such Cases it is either the Act of the Lessor himself, or the Act of a Stranger, and in none of the said Cases, the sole Act of the Lessee himself shall prevent the Lessor of his Remedy, and will introduce such Inconvenience as has been said. Privy of Contract and Estate together, is between the Lessor and Lessee himself. 3 Rep. 23. Hill. 29 Eliz. in Walker's Case.——Lat. 260. *Iremonger v. Newsam* S. P.

5. *Privies inheritable*, As Heir General, shall take Benefit of the Infancy, *Privies in Blood shall* as if Infant Tenant in Fee Simple makes Feoffment and dies, his Heir shall enter. The same Law of him that is Heir General and Special, *take Advantage of Nonage* and also of him that is Heir Special and not General. But Privies in Estate (unless in some special Cases) shall not take Advantage of the Infancy of the other. 8 Rep. 42. b. 43. *Whittingham's Case*.
not Privies
in Law ver Privies in Estate. Arg. 3 Euls. 272. cites 8 Rep. 42. Whittingham's Case.

6. A Surrender by an Idiot of an Estate for Life to destroy a Contingent Remainder is void ab initio, and therefore any Person may take Advantage of it, as well Privy in Estate as Heir at Law. But a Feoffment and Livery made *Proprius Manibus of the Idiot* not being merely void, makes a Difference. Carth. 436. Hill. 9 W. 3. *B. R. Thompson v. Leech*.

For more of Privy in General, See Aid, Assignment, Confirmation, Covenant, Descent, Fines (X. 2) and other proper Titles.

Process.

(A) *Judicial. How it ought to be made.*

1. **I**F an Action of Battery be brought against B. C. and D. and J. S. and J. D. are Bail by Recognizance for B. and C. and not for D. and after Judgment against B. C. and D. for Costs and Damages a Scire Facias is sued to have Execution against J. S. and J. D. the Bail, and the Scire Facias recites the Action and Judgment against B. C. and D. and that they were Bail for B. and C. and that the said B. and C. have not satisfied the Judgment, nor rendered themselves to the Prison, and therefore they shall shew Cause why Execution shall not be awarded against them, and the Scire Facias is not, that D. against whom the Judgment is allo, has not satisfied the Judgment as it may be that he has, nor that B. and C. has not

not satisfied it *Nec eorum aliquis*, as is usual, yet this is a good Writ, for in as much as they were Bail only for B. and C. it is sufficient to say, according to the Condition of the Recognizance, that they have not rendered themselves to Prison, without saying *Nec eorum aliquis*, and without saying nor the said D. for if B. or C. have paid it, it is the Payment of both; And if D. has paid it, it ought to come of the other Part to be shewn. *Id.* 11 Car. V. R. between *Barnes and Hill*. Adjudged upon a Demurrer. *Intratur.* *Hill.* 10 Car. Rot. 897.

2. Debt by the Executors of one Parson against another Parson upon Arrears of Annuity arrear in the time of their Testator, the Defendant said, That he found his Church discharged, and prayed Aid of the Patron and Ordinary, and had it. The Prothonotary was in a Doubt, if he should make the *Summons ad Auxiliand'* to the Sheriff of L. where the Writ was brought, or to the Sheriff of E. where the Church was; And per Martin and Hals, because this is a *Judicial Process* he shall pursue the Original, and it shall be brought first in the County where the Original is brought, and if they are returned *Nihil* there, then Process shall be made upon a *Testatum* to a Foreign County. *Br. Process*, pl. 3. cites 2 H. 6. 8.



(B) *Distingas*. *Distingas upon Testatum* at the Common Law.

1. **U**PON a *Distingas*, if the Sheriff returns a *Nihil* upon a *Testatum* of *Assets* in other County, by which he may be distrained, a *Distingas* shall issue into the other County; For otherwise there should be a Failure of Right. 3 H. 4. 4. 6 E. 4. 11. 27 H. 8. 22. b.

2. So if upon a *Distingas* the Sheriff returns *Petit Issues*, so that the Parties do not appear upon a *Testatum* of *Assets* in other County, a *Distingas* shall issue for the Benefit of the King to have greater Issues, and for the speedier Justice. *Entries* fo. 226. a. *Distress* 4. Cr. 30 H. 8. Rot. 102. *Id.* 18. H. 8. Rot. 304.

(C) Upon the 25 E. 3. cap. 17. *Capias or Exigent*.

Detinue of a Box; the Defendant came

1. **I**F a *Detinue* of a Chest with Charters a *Capias* and *Exigent* lies by reason of the Chest. 29 E. 3. 19. b. Adjudged.

by *Capias*, and the Plaintiff counted of a Box with Charters concerning Land, and therefore the Defendant prayed to make Attorney; And because now it appears by the Count, that it touches the Realty, therefore *Capias* does not lie, by the Opinion of all the Court; and therefore now he shall make Attorney. *Br. Exigent*, pl. 15. cites 7 H. 4. 2. — Note, per Mombrey, that *Ca. Sa. lies j. Execution in Detinue of a Bag of Charters*, because the Bag is only a Chattel, and *Capias* lies upon the Original thereof, and therefore *Capias* may be Execution; *Quere inde*. And from hence see, that where *Capias* is not the Process upon the Original, that there *Ca. Sa.* is not the Execution, & sic dixit *Belk* ibidem. *Br. Exigent*, pl. 8. cites 40 E. 3. 25. — *Br. Process*, pl. 18. cites S. C.

The *Capias* is not by this Statute, but by the Common Law.

2. 25 E. 3. Stat' 5. 17. Process shall be made in a Writ of Debt and *Detinue of Chattels*, and taking of Beasts by Writ of *Capias*, and by Process of *Exigent* by the Sheriff's Return, as is used in a Writ of *Account*.
Per *Manwood* Ch. B. 2 Le. 58. pl. 112. in Case of *Oguel v. Patton*.

3. If the *Disseisin* be found *with Force and Arms*, *Capias pro fine* shall be awarded, and *Exigent* thereupon. Br. Process, pl. 32. cites 7 H. 4. 39.

4. In *Replevin Witherman* was awarded for the Defendant against the Plaintiff; the Sheriff returned, *Quod Avera Klongata sunt*; there Witherman was awarded for the Defendant of the Goods of the Plaintiff, and the Sheriff returned *Nihil*, by which 3 *Capias*'s issued, and at the Pluries returned, *Exigent* issued; *Quod Nota*, that the Plaintiff may be outlawed upon his own Suit. Br. Process, pl. 34. cites 11 H. 4. 10. Br Replevin, pl. 18. cites S. C.

5. *Justicies to the Sheriff to hold Plea upon Obligation of 1000 Marks*, the Justicies was removed into Bank by *Pone*, upon which the Defendant was returned *Nihil*; the Plaintiff prayed *Capias*; And per Martin and Cockain. the *Capias* does not lie, For the Statute which gives it *lays*, in *Writ of Debt Capias* lies, which is intended *Original*, and this *Justicies* is not *Original*, but a *Commission to the Sheriff to hold Plea beyond 40 s.* And the Sheriff upon this cannot award *Capias* in the County, nor *Ca. Sa.* Br. *Exigent*, pl. 5. cites 3 H. 6. 54, 55.

6. In *Trespas* the Defendant appear'd and had *Day by Dies datus &c.* and at the Day made *Default*, by which issued *Distingas*, and he is returned *Nihil*; there shall issue 3 *Capias*'s & *Exigent*; *Quod nota* after Appearance. Br. *Exigent*, pl. 6. cites 19 H. 8. 1.

7. In *Trespas* upon the Case the Plaintiff had proceeded against the Defendant in the old way by *Pone* & *Distress*, and the Defendant moved to stay the Proceedings, suggesting the same to be contrary to the Method prescribed by the late Act of Parliament to prevent vexatious Arrests, 12 Geo. & 2 Geo. 2. And the Question was, Whether by these Statutes the old Method of Proceeding be taken away, and another Method instituted, or not? It was urged for the Plaintiff, That before the Statute of Marlbridge no *Capias* lay, that the ancient Course of Proceeding was by *Original*, and where the Party was returned attach'd no Process lay, but a *Distingas*, except in *Trespas Vi et Armis*. In this Case the Party is returned attach'd upon the *Original*, and no Process of Outlawry lies. The Act of Parliament 12 Geo. prescribes a Method in Cases where the Cause of Action is under 10 l. and the Plaintiff proceeds by way of Process against the Person; but here the Plaintiffs do not proceed by way of Process against the Person, and after the *Original* returned as aforesaid, no Process against the Person can issue, and consequently the Party cannot be served with Process. There is also an Exception in the Statute 12 Geo. as to *Peers and privileg'd Persons*, who are to be proceeded against as by the Statute 12 W. 3. but that can relate only to Cases where the Proceeding is by way of Process against the Person, and not by Method of *Pone and Distress*, which is a dilatory Method in the Defendant's Favour, where *Essoins* may be cast, and remains as it was, not affected by any of these Statutes. Per Cur. The Statutes of Marlbridge and 25 Ed. 3. do not take away the ancient Method of Proceeding by *Original and Distingas*; But where it is returned upon the *Original*, That the Defendant hath nothing whereby he can be attach'd, a *Capias* against the Person may be issued, and a Proceeding to Outlawry carried on. The Words of the Statute 12 Geo. extends only to Proceedings by way of Process against the Person, and seems to admit Plaintiffs may proceed otherwise, as before; And it would be hard to say, This Clause hath repealed the Law by Implication. As to Proceedings against privileg'd Persons; a new Method by Bill is prescribed by the Statute of 12 W. 3. but the Law not alter'd. Let the Rule to shew Cause why the Proceedings should not be stay'd be enlarged. Notes in C. B. 292. Trin. 10 Geo. 2. Bias and Wife and Goodfellow v. Lyell.

(D) *What Process shall be awarded.*

In false
Imprison-
ment the
Defendant
justified
by a Ca-
pias di-
rected to

1. **A** Capias shall not be awarded before a Summons, but the first Process ought to be a Summons. 19. 16 Ja. B. R. between *Banks and Pembleton*. Adjudg'd.

2. Also a Capias cannot be first awarded before any Summons by Custom of any Court, for it is contrary to the Law. 19. 16 Ja. B. R. between *Banks and Pembleton*. Adjudg'd.

directed to him upon a Suit commenc'd against the Plaintiff in an inferior Court; the Plaintiff demurr'd because it was not shewn that a Summons issued first, and inferior Courts can award no Capias but upon a Summons first return'd. Hale Ch. J. said, That the ordinary Practice of those Courts to grant a Capias without a Summons is a great Abuse, so that the Party is driven to Bail in every trivial Action, and tho' upon a Writ of Error this Matter is not assignable, because a Fault in Process is aided by Appearance &c. yet false Imprisonment lies upon it, and the Officer cannot justify here as in Process out of the Courts of Westminster; And Judgment for the Plaintiff. Vent. 220. Trin. 24 Car. 2. B. R. *Read v. Wilmot* — S. C. of *Read v. Wilmot* was cited by Powel J. in the Case of *Grinne v. Pool & al.* who said, That tho' he has as great Respect as any Man for the Opinion of Hale Ch. J. yet he cannot agree to this Judgment, which he said was given upon the first Argument upon a Displeasure conceiv'd against the Male Practices of inferior Courts in this irregular Way of Proceeding, but that it certainly is only a Process Inverso Ordine, and erroneous only; and that in the Case of *Ward v. Ellard*, Cro. J. 261. it was held to be Error, and that so is *Marget and Harvey's Case* Palm. 449. and that no Custom of any inferior Court will make this Process good; but that by the Custom of London, which is confirm'd by Act of Parliament, this Process is held good in *Hackalley's Case* 9 Rep. 68. But it there appears, That without this Custom it would be only erroneous Process; And says, He sees no Reason why Officers of the superior Courts should be thought more knowing than those of the inferior. Lutw. 1564, 1565. Mich. 4 W. & M.

(E) *Who may award the Process.*

1. **I**F a Man be outlaw'd before the Justices of the Peace in their Sessions, the Justices of the Peace may award a Capias Utlagatum thereupon; for the Court which can outlaw a Man may also award Process of Outlawry. 9. 10 Ja. B. Per Curiam.

2. The same Law of Justices of Goal-Delivery. Mich. 10 Ja. B. Per Curiam.

(F) *Execution.*

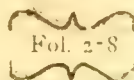
Bailiff stood
at the Street-
Door, and
sent his Ser-
vant up 3
Pair of Stairs
in a disguis'd
Habit with
the Warrant,
who laid

1. **I**F a Special Bailiff, by Force of a Warrant upon Capias in Process, enters into the House of J. S. the Door being open, and there takes J. D. against whom the Writ is, the Process is well served as to J. D. and all Strangers; And if any Stranger rescues him, he at whose Suit he is arrested shall have his Action against the Stranger. Tr. 16 Ja. B. R. between *Hodges and Marks*. Adjudged upon Demurrer.

Hands on W. R. and told him, That he arrested him. Holt Ch. J. doubted if this was a good Arrest, being done by the Bailiff's Follower or Servant, and not in the Presence of the Bailiff himself; but said, That the Plaintiff must prove his Cause of Action against W. R. and must prove the Writ and Warrant by producing sworn Copies of them. And he must prove the Manner of the Arrest, that it may appear to the Court to be a lawful Arrest; and in Point of Damages, he must likewise prove the Loss of his Debt, viz. That W. R. became Insolvent, or could not be retaken. 3 Salk 311 Anon. — 6 Mod. 211. Trin.

Trin. 3 Ann. B. R. S. C. By Name of Wilson v. Gary.—— If a Bailiff, having a Warrant from a Sheriff on a Capias, sends another in his Room to arrest the Person, such Arrest is illegal. Per Holt Ch. J. 12 Mod 73. Trin. 7 W. & M. Anon.

(G) At what Time the Process may be executed.



1. **I**f a Latitat returnable Die Lunæ proximo Post Crastinum Sanctæ Trinitatis, which was this Year the 10th of July, comes to the Sheriff to arrest J. S. the Sheriff may arrest him the said 10th Day of July. Tr. 3 Ja. B. R. between May and Hoper, by Fenner and Velberton agreed.

The utmost Length of Time the Law allows for executing a Writ is the Day on

which 'tis returnable, and 'tis not executable that Day any longer than the Court sits. 1 Salk 322. pl. 8. Pasch. 3 Annæ. B. R. in the Case of Perkins v. Wollaston. — 6 Mod. 130. S. C.

2. So a Capias in Process may be executed the Day of the Return thereof.

3. So a Capias ad Satisfaciendum may be executed the Day of the Return thereof.

4. If a Writ of Enquiry of Damages be returnable Octabis Michaelis, the Sheriff may take the Inquest and inquire of the Damages the Day of the Return, and afterwards return it the same Day, and this Writ is well executed. Tr. 38 El. B. R. between *Gawen and Ludlow. Adjudg'd. And there is cited to be adjudg'd accordingly in *Bugber's Case, which was Mich. 11 Car. B. R. between Stainesly and Waterman in Replevin, the Writ to inquire for Damages for detaining of Rent executed the same Day of the Return, that is to say, the Effoign Day, and Per Curiam good. But new Writ was awarded, because the Damages were excessive.

* Cro E. 468. S. C. and cites the Case of Buckleer v. the Queen. — S. P. Adjudg'd. And S. C. cited Mo. 12. pl. 998. Mich 41 & 42 Eliz. in the Case of

Woolley v. Moosley — But if the Inquest had been taken the 2d Day of Crast. Trin. and before the 4th Day of Crast. Trin. it had not been good. Cro. E. 182. Pasch. 32 Eliz. Bugber's Case.

5. If upon a Writ to inquire of Damages, the Inquest be impannell'd the Effoign-Day, and the Jury then hear their Evidence, but give their Verdict 2 or 3 Days after, yet this is well executed. Mich. 11 Car. B. R. in the said Case of Stainesly and Waterman, said by Jones and Barkley, That this was adjudg'd in *Bugber's Case.

* S. C. & P. cited to have been adjudg'd good; for the Jury being charged at

the first Day, tho' they gave not their Verdict 'till 2 Days after, it shall not prejudice the Party; but the Verdict being given, shall relate to the first Day of the Return, and shall be said to be executed upon the first Day, to which it shall have Relation; And for that Reason, Popham Ch. J. who before aſſer'd, agreed in the principal Case, That the Writ was well executed. Cro. E. 468. (bis) Pasch. 39 Eliz. B. R. pl. 26. Gawen v. Ludlow.

6. If a Nisi Prius be taken after the 1st Day of the Return, and before the 4th, it is not good; for the Justices have no Power to take it after the Day of the Return. 33 H. 6. 45. b. Adjudgen. Tr. 38 El. B. R. Agreed.

7. But if the Nisi Prius be taken the Day of the Return, or before, and the Jury do not give their Verdict 'till 2 or 3 Days after, because they cannot agree, yet it is good enough; because otherwise the Jury may prejudice the Parties by their Disagreement. Tr. 38 El. B. R. Per Popham.

8. So it is of a Writ of Inquiry of Damages taken in such Manner. Tr. 38 El. B. R. Per Popham. And there said, That it was so adjudg'd in Bugber's Case.

S. C. cited Per Cur. Cro. E. 180. pl. 15 Pasch. 32 Eliz. B. R. in *Bugberd's Case*, and took a Difference between the executing a Writ of Inquiry of Damages and the Case of an Exigent, and of the *Venue facias ad Diem Octabis*, there the Day is excluded, but not in Writ of Enquiry.

9. If a Man be outlawed after the first Day of the Return of the Writ it is erroneous 33 H. 6. 46. said to be oftentimes so adjudged by the Advice of all the Justices.

S. P. for this is one and the same 10. The Sheriff upon a Capias in Process cannot arrest the Party after the Day of the Return, and before the 4th Day. 33 H. 6. 45. b.

Day in Effect, and when the first Day is past, his Authority is expired. Br. Process, pl. 169. cites S. C. —In Trespass for Battery and Imprisonment, Defendant justified by Execution of a Writ, but upon the Plea it appeared to be executed *after the Day of the Return, but before the Quarto Die post*. The Execution was adjudged illegal, and Judgment for the Plaintiff. Lev. 143. Mich. 16 Car. 2. B. R. Ellis v. Jackson. —Sid. 229. S. C. accordingly.

11. If a Man vouches two as Heirs, the one of full Age, the other within Age, and prays that the Parol demur, and the Demandant says that he is of full Age, and prays Venire facias to be viewed, Process shall issue against him of full Age; Per Markham; but Newton e contra; and that no Process shall issue till the other be adjudged to be of full Age. Br. Process, pl. 61. cites 19 H. 6. 5.

12. A Writ by the Roll was awarded returnable on Wednesday, but was made returnable on the Thursday, and executed on the Thursday. The Writ was ordered to be amended according to the Roll, and the Execution upon the Thursday void. Cited by Windham J. Lev. 143. Mich. 16 Car. 2. B. R. in Case of Ellis v. Jackson.

13. In false Imprisonment Defendant justified by Arrest on a Latitat. Plaintiff replied, that the Writ was taken out after the Arrest. The Defendant demurred. Per Cur. The Writ being antedated is no Justification and Judgment for the Plaintiff. 3 Keb. 213. Mich. 25 Car. 2. B. R. Chancy v. Rutter.

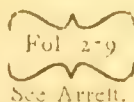
(H) Who may execute it.

1. Statute of Lincoln, 11 E. 2. in Magna Charta, fol. 109. b. and that the Executions of Writs which shall come to the Sheriffs be made by the Hundredors known and sworn in full County, and not by others, if it be not in great Default, or notorious Disturbance of Hundredors, and then let them be made by others covenable and sworn, so that the People might know who shall serve such Executions, saving all Returns of Writs to those who have and ought to have them.

2. Trespass of Battery in Middlesex, and the Plaintiff counted in the Palace of Westminster where the Sheriff has no Jurisdiction; And per Marten the Count shall abate; For it is *Infra*, and not *De*; for the Palace is no Part of the County, for Process shall issue immediately from the Court to the Warden of the Palace, and not to the Sheriff, and therefore he may direct Precept to the Warden, as in Case of a Liberty within the County. Br. Count, pl. 77. cites 2 H. 6. 7.

3. Writ shall not be served part by the Sheriff, and part by the Bailiff of the Franchise by Parcels; Quod Nota. Br. Process, pl. 33. cites 8 H. 4. 17.

(I) *What shall be said a good Arrest in Law.*



1. If three Writs of Capias in Process at the Suit of J. S. against J. D. be directed to the Sheriff, and the Sheriff makes three special Warrants to one special Bailiff, and he comes to J. D. and arreits him generally, without shewing in which Action, nor is it demanded of him; but immediately upon the Arrest a Stranger rescues him, Action upon the Case lies against the Stranger for all three Rescues; For this was an Arrest in Law upon all. *Tr. 16 Ja. B. R. Adjudg'd between Hodges and Marks.*

The Arrest, without shewing the Warrant in his Hand, and having all the Warrants about him was well enough, though he

did not shew by which of the Warrants he arrested him; for he, being under the Bailiff's Arrest, is in Custody there for all Causes for which the Sheriff had made his Warrants against him, though the Sheriff or Bailiff do not mention any specially. *Cro. J. 486. S. C.*

2. So if the Writs and Warrants were at the Suit of three several Persons, and the Bailiff arreits him generally as before, this is a good Arrest for all, and all shall have Actions for the Rescue. *Tr. 16 Ja. B. R. between Hodges and Marks per Curiam.*

Cro. J. 485. S. C.

3. If a Warrant be directed by the Sheriffs of London to certain Serjeants there to take A. B. a Countess upon a Capias ad Satisfaciendum, and the Serjeants, for Fear of a Rescue, procure the Party Plaintiff to enter an Action of 1000 l. against the same A. B. by the Custom of London, whereupon they would arrest her, and carry her to the Compter, and there charge her in Execution, And after the Serjeants come to A. B. and say that they arrest her, without saying more; This General Arrest cannot be by force of the Writ of Execution; For when the Sheriff or other Person by his Authority makes Arrest of the Person of another, [he] ought upon the Arrest to shew at whose Suit, out of what Court, for what Cause he does it, and when the Process is returnable, to the Intent, if it be for any Execution, that he shall pay it and free his Body, or agree with the Party, or put in Bail according to the Law, and to know when he shall appear. *Co. 6. Countess of Rutland. 54. Resolved.*

When a Bailiff makes an Arrest by Warrant, he ought to shew the Cause of the Arrest, as to say, that he arreits him on an Execution, and for how much Money; And if it be upon Appearance, he shall tell the Court, and the Day of

Appearance comprised in the Writ, otherwise the Arrest is not good. And yet a known Officer shall not be compelled to shew his Warrant as a special Bailiff shall, but though he has a Warrant and will not shew it, yet he shall declare to the Party the Cause of the Arrest. *Mo. 767 pl. 1063. Mich. 3 Jac. in the Star-Chamber. S. C.*

If Process be delivered to the Sheriff, and he takes the Party without saying any thing, it is good; for otherwise the Sheriff shall be a Trespassor, which the Law does not intend, and the Sheriff has a lawful Authority so to do; and so it is, though the Sheriff had not the Process about him at the time of the Arrest. *Noy. 55. Beale v. Taylor.*

4. Upon a Capias in Process at the Suit of J. S. if a Special Bailiff by force of a Warrant to him directed, arreits the Party, and does not say at whose Suit, nor is it demanded of him at whose Suit it is, but immediately upon the Arrest a Stranger rescues him, this is a good Arrest, and an Action lies against the Stranger; For he had not time to shew at whose Suit it was, nor is he bound to shew at whose Suit it is, before that he has peaceably submitted to the Arrest. *Tr. 16 Ja. B. R. between Hodges and Marks. Adjudged upon Demurrer.*

And though the Warrant was in his Pocket, and he only said, Here I do arrest you by Virtue of a Warrant which I have, but did not shew

him the Warrant, nor had it in his Hand, yet it was resolved, that this was a good and legal Arrest, and that he needed not to shew the Warrant till the other obeyed and demanded it. *Cro. J. 485, 486 Trin. 16 Jac. B. R. S. C.*

5. A Man who is *Sheriff* of London and Middlesex, or of Essex and Hertford, cannot take a Man in the one County by *Capias* directed to him in the other County; but a Man taken in Middlesex shall be brought to Newgate in London; for this is the Goal of both Counties. Br. Process, pl. 168. cites 16 E. 4. 5, 6.

6. *A. comes to the Sheriff, and tells him he has a Writ against B. who is then present, and on this the Sheriff says, I will take his Word for his Appearance, this cannot be taken for an Arrest.* Arg. Vent. 118. Pasch. 23 Car. 2. B. R. in Case of Methwin v. Hundred of Thistleworth.

7 Mod 8. S.P.
Anon—S.P.

2 Roll R.

13 S. Sir

William

Fish's Case.

7. A Bailiff caught one by the Hand at a Window whom he had a Warrant to arrest; This was such a Taking, that the Bailiff might justify breaking open the House to carry him away. Vent. 306. Hill. 28 & 29 Car. 2. Anon.

For more of Process in General, See Arrest, Contempt, Execution and other proper Titles.

Pro Confesso.

(A) In what Cases a Bill shall be taken Pro Confesso.

S.P. Toth.
100. cites 10
Jac. Earl of
Hertford v.
Gerrard.

The De-

1. **B**ECAUSE the Defendant stood out all Process of Contempt for not answering, the Bill was taken Pro Confesso. Toth. 100. cites 35 Eliz. Wildgoss v. Ragland.— And 11 Jac. Denton Mill v. Brown.— Ibid. cites 13 Jac. Earl of Oxon v. Gouch.

The Defendant stood in Contempt for not answering the Plaintiff's Bill, and thereupon a Sequestration was granted, and it was likewise decreed, That the Bill should be taken Pro Confesso, unless the Defendant gave Cause within a certain Time limited for that Purpose by the Court. But this must be understood (as the Case then was) where the Defendant had appear'd; for if he did not appear at all, but stood out all Contempts to a Serjeant at Arms, no Decree can be had against him, or the Bill taken Pro Confesso; for that must be after an Appearance, and when he stands in Contempt for want of an Answer. N. Ch. R. 1, 2. Pasch. 1 Car. Okeham v. Hall.

Where the Defendant has not appear'd, Chancery can't decree the Bill Pro Confesso, but ordered a Sequestration against his Real and Personal Estate till he clear'd the Contempt. 2 Ch. R. 284. 35 Car. 2. Nodes v. Battle.

The Course of the Court now is to take a Bill Pro Confesso after the Party has once appear'd, and stands out in Contempt till the Plaintiff has got to the End of the Line, and has run thro' all the Process of the Court against him; yet formerly this Court did not do it even in that Case without putting the Plaintiff to prove the Substance of his Bill. Arg. Vern. 224. Hill 1683 in the Case of Johnson v. Desmoneere.

2. Two Defendants, the one having answered, the other refuses, he shall be bound by the other's Answer, if the Cause pass against them. Toth. 74. cites 7 Jac. Matthew v. Matthew.

3. Defendant being a Prisoner in the King's Bench, refus'd to answer. The Bill can't be taken Pro Confesso, unless he was in the Prison of this Court; whereupon he was removed by Habeas Corpus into the Fleet, and having a Day given him to answer, and he still refusing, the Bill was taken Pro Confesso, and he was ordered to be kept close Prisoner. N. Ch. R. 50. 1653. Thomas v. Jones.

4. Where

4. Where the Defendants were not brought in upon any Process of Contempt, but they appear'd to the Subpœna to answer, and *crav'd a further Day*, and had it, and still *stood out all Contempts*, and could not be taken, the Bill was taken Pro Confesso, and a Decree upon it decreed to be well grounded, and a Bill of Review ordered to be dismiss'd. N. Ch. R. 64. 14 Car. 2. Denny v. Filmore.

5. In a Suit for *Tithes* the Defendant was in Contempt for not answering, and was brought by several Orders to the Bar; and being a *Quaker* refused to answer on Oath, but pray'd to answer without Oath. Finch C. admonish'd him of the Peril, viz. That the Bill must be taken for true *entirely as 'tis laid*, if he answer'd not; and he saying as before, the Lord Chancellor pronounc'd the Decree, tho' Sir J. Churchill, as Amicus Curie, said, That this Cause for Tithes, especially small Tithes, was not proper for this Court, and had not been used; but decreed for the Plaintiff, and referr'd the Valuation to the Master. 2 Chan. Cases 237. Mich. 29 Car. 2. Anon.

6. Defendant having appear'd, and afterwards stood in Contempt 'till Sequestration was return'd, It was insist'd, That the Bill ought to be taken Pro Confesso; but the Lord Keeper said, He would consider of it 'till the next Term. And it being alleg'd, That Baron and Feme were Defendants, and that it was the Wife only who had appear'd, and that without the Husband's Privity, Lord Keeper refer'd it to a Master to examine the Fact, and said, If it should fall out to be so, he could not decree against the Husband, but they must proceed and lay on the Sequestration to bring him in. Vern. 247. Trin. 1684. Gibson v. Scevengron.

7. A Defendant refusing to answer, and standing out all Contempts 'till an Order was made for a Sequestration; it was pray'd by the Plaintiff's Counsel, That the Bill might be taken Pro Confesso. To which it was objected by the Counsel on the other Side, That this could not be done, because the Sequestration was neither under Seal nor executed, and also because the Plaintiff did not produce the Original itself, but only a Copy of it. Lord Chancellor Parker held the last Objection certainly a good one; but as for the other, there seem'd to him to be no Reason for it; for the Putting the Seal to the Sequestration, and actually Executing it, seems to be then only necessary when the Plaintiff is not ripe for a Decree upon his own Bill, but wants some Discovery from the Defendant's Answer, upon which the Decree may be founded; and therefore the actual Executing a Sequestration to extort an Answer, of which the Plaintiff has no Occasion, seem'd to him very unnecessary. 10 Mod. 431. Pasch. 5 Geo. Anon.

8. 5 Geo. 2. cap. 25. S. 1. Enacts, That if in any Suit in Equity any Defendant, against whom Process shall issue, shall not cause his Appearance to be enter'd according to the Rules of the Court, in Case such Process had been served, and Affidavit shall be made, That such Defendant is beyond the Seas, or that, upon Inquiry at his usual Place of Abode, he could not be found, so as to be serv'd, and that there is just Ground to believe that such Defendant is gone out of the Realm, or absconds to avoid being serv'd, the Court may make an Order, appointing such Defendant to appear at a Day therein to be named, and a Copy of such Order shall, within 14 Days, be inserted in the London Gazette, and publish'd on some Lord's Day, after Divine Service, in the Parish Church where such Defendant made his usual Abode within 30 Days next before his Absenting, and a Copy of such Order shall be posted up, viz. A Copy of such Order made in Chancery, Exchequer, or Dutchy-Chamber, shall be posted up at the Royal Exchange; and a Copy of every such Order made in any of the Courts of County of the Counties Palatine, or of the Great Sessions in Wales, shall be posted up in some Market-Town within the Jurisdiction of the Court, nearest to the Place where such Defendant made his usual Abode, such Place of Abode being within the Jurisdiction of the Court; And if the Defendant do not appear within such Time as the Court shall appoint, then, on Proof made of such Publication of such Order as aforesaid, the Court may

Mr. Serjeant Barnardiston in his Reports of Cases in Chancery 401 to 404. tells us, That the Opinion of the Court was, that it is not sufficient upon this Statute to make Affidavit, That the Party making it was inform'd, and believes that the Defendant does themselves into Ireland, in order to

order to being

serv'd with
the Process
of this Court.
But it must
be likewise
sworn by
whom the
Deponent re-
ceiv'd such
Information,
and cites
Hill. 1-40.
Burton v.
Maloon.

order the Plaintiff's Bill to be taken *Pro Confesso*, and make such Decree thereupon as shall be just; and the Court may order such Plaintiff to be paid his Demands out of the Estate sequestred according to the Decree, such Plaintiff giving Security to abide such Order touching the Resitution of such Estate, as the Court shall make upon the Defendant's Appearance. But in case such Plaintiff shall refuse to give Security, then the Court shall Order the Effects sequestred to remain under the Direction of the Court until the Appearance of the Defendant to defend such Suit.

Provided, That this Act shall not affect Persons beyond the Seas, unless Affidavit be made of their being in England within 2 Years before the Subpœna.

Nor extend to Courts having a limited Jurisdiction, unless Oath be made of Personal Residence in such Jurisdiction one Year before the Subpœna.

9. The Defendant appeared and stood out to a Sequestration, and afterwards, on getting Time, put in an Answer, which was reported insufficient in near 20 Exceptions, and was served with Subpœna to make a better Answer. The Defendant put in another Answer alike insufficient. It was insisted for the Defendant, That the *Practice of taking Bills Pro Confesso* is not of long standing, the ancient Way being to put the Plaintiff to make Proof of the Substance of the Bill; and that, in this Case, taking all the Bill *Pro Confesso*, where Part had been sufficiently answer'd, seem'd very strange. But it was answer'd, That an insufficient Answer is as No Answer, and therefore the whole to be taken *Pro Confesso*; And the Master of the Rolls decreed for the Plaintiff. But Lord Chancellor King, on an Appeal, said, He would consider how Matters stood at the Time of such Decree, and that it was sufficient that there then was an Answer, and which the Plaintiff had admitted to be so by suing Process for a better; and that to say the Defendant confess'd the whole Bill true, when, by the Master's Report, (which was a Record of the same Court) that he had answered the greatest Part; and when the Plaintiff himself had taken the first Answer to be an Answer in Part by serving the Defendant with Process to put in a better, is against Common Sense; and revers'd the former Decree. 2 Williams's Rep. 556. Mich. 1729. Hawkins v. Crook.

10. If a Defendant obstinately insists upon his Demurrer, and refuses to answer where the Court is of Opinion, That sufficient Matter is alleg'd in the Bill to oblige him to answer, and for the Court to proceed upon, the Court will decree the Matter of the Plaintiff's Bill; For by the Demurrer are confess'd all Matters of Fact that are alleg'd. Curf. Canc. 209

For more of *Pro Confesso* in General, See Contempt, Sequestration, and other Proper Titles.

Procurations.

1. 34 & 35 H. 8. 19. **E**NACTS, That Penfions, Portions, Censures, Indulgencies, Synodics, Proxies, and all other Rights due out of Religious Lands dissolved, shall be paid to Bishops &c. by the Occupiers of the same Lands, if such Ecclesiastical Persons were seised thereof within 10 Years before their Dissolution. And if upon Suits in the Ecclesiastical Court for the same, where the Payment thereof is wilfully deny'd, the Defendant be convicted,

convicted, the Plaintiff shall recover the Value thereof in Damages, together with his Costs of Suit. The like he shall recover at the Common Law, when the same is thereby determinable.

Provided, If the King hath demised any of the said Lands with a Covenant to discharge the Tenant of such Charge, that then the Party claiming the same shall sue for them in the Court of Augmentations, and not elsewhere.

Procurations and Proxies; the Suggestion was, That by the Statute all such Archbishops &c. as have a Right to any Proxies &c. against those to whom the King should grant any Lands charged therewith, with a Clause in the Grant, That the said Lands should be discharged, should sue for the same in the Court of Augmentations, now annex'd to the Exchequer, and not elsewhere; that in the present Case the Lands were granted by Patent discharg'd of Proxies &c. Sed non Allocatur, because this Statute extends only where particular Estates are granted over, as appears by the Words, Any Sale &c. for Life, Lives or Years, and not where the Fee is granted, as it was in this Case. Hard. 388. Mich. 16 Car. 2. in Seacc. the King v. Lake.

2. An Archdeacon brought his Bill in the Exchequer against the Defendants, being Parsons and Vicars in London, for certain Sums of Money due for their Proxies by Prescription. The Defendants demurr'd, for that the Thing in demand was merely of Ecclesiastical Cognizance; and if the Title by Prescription alter'd the Case, then the Plaintiff ought to have his Remedy at Law, and not in Equity. But of this the Court doubted, Et Adjournatur. The Chief Baron cited Lindw. That there are 3 Sorts of Proxies, Ratione Visitationis, Consuetudinis, and Pacti; that the 2 last were recoverable at Law, but because in this present Case the Matter was doubtful, the Defendants were ordered to answer, and this Matter should be saved to them at the Hearing. Hard. 180. Patch. 13 Car. 2. in the Exchequer. Dr. Parker v. Seabrook & al.

3. Libel against K. for Procurations due to him as Archdeacon of York set forth, That for 10, 20 &c. Years there hath been due and paid 6 s. yearly by the said K. and his Predecessors, Parsons of D. But K. alleged for a Prohibition, That the said Duty hath not been payable, and denied the Prescription, and that the Ecclesiastical Court cannot try Prescriptions. Per Curiam, A Consultation is granted Quoad Procurations demanded generally; But if the Plaintiff denied the Quantum, then a Prohibition. Raym. 360. Patch. 32 Car. 2. B. R. Kirton v. Guilder. If the Difference be about the Quantum, then they ought to have said in the Suggestion, That so much is due, and no more; But here the whole is denied. But the whole Court agreed, That a Suggestion cannot be amended after a Prohibition is gone, nor in this Prohibition.

4. Adjudg'd, That * Procurations are an Ecclesiastical Duty, and therefore properly liable for in the Spiritual Court. 2dly, Where it was claimed by and from an Ecclesiastical Person, it is so much the stronger. 3dly, Tho' there was an Impropriation in the Case, still there must be a Curate to take Care of the Souls of the Parish; and Curates as well as other Persons must stand in need of Bishops or Archdeacons Instructions and Visitations. Consequently, 4thly, That the † Ordinary or Archdeacon ought to be allowed for his Procurations what had been actually paid for it, which in the Principal Case appeared to be 6 s. 8 d. 5thly, That where a Thing is claimed by Custom in the Spiritual Court, it must be intended according to their Construction of a Custom, and by their Law 40 Years make a Custom or Prescription. 6thly, That the Payment of 6 s. 8 d. for 70 or 80 Years is an Evidence of an Immemorial Payment. But if it could not be strictly Immemorial, as taking the Archdeaconry to have been founded in E. 6th's Time, yet since that Period it might become due by Endowment, which might in this Distance of Time have been lost. Williams's Rep. 657, 663. Mich. 1720. B. R. Saunderson v. Clagget.

thus explained by the Canonists. Hoc Munus ideo Procuratio vocatur quia Ecclesia Episcopum procuratorem, i. e. Curatorem, alunt, & sustentant. 2 Gibf. Cod. 1. 16. ——— Donatives & Free Churches pay no Procurations to any Ecclesiastical Ordinary, because they are not visitable by any. 1 Ed.

In a Prohibition to stay an Excommunication for not paying

2 Show. 97. S. C. by the Name of Giron v. Gilder, but Adjournatur. But there Seroggs Ch. 1. said, That if the Difference be about

* Procurations, Synodals and Petitionals being denied when due, are recoverable in the Spiritual Court, being Profits of a mere Spiritual Nature. 2 Gibf. Cod. 1. 17.

† Procurations are due to the Person vicarary, De Jure Consuetudine. The Term is

5. *Churches newly erected* shall be rated to Procurations according to the Proportion paid by the neighbouring Churches. 2 Gibf. Cod. 1016.

For more of **Procurations** in General, See Dav. Rep. The Case of Proxies.—Godolph. Rep. cap. 9.—Gibf. Cod. &c.

Profession.

Fol. 280.

(A.) Profession. *Dereignment.*

He could not be discharged of his Profession by any but the Pope. Br. Nonability, pl. 2. cites S. C.

1. **A** Monk under Obedience may be discharged of the Obedience by the Archbishop, with Licence of his Sovereign. 3 D. 6. 24.

2. A Man profess'd cannot be made able for Things Temporal, as to purchase Land, or to have Advantage of an Obligation, by any except the Head of the Church, not by the Archbishop. 3 D. 6. 24.

Br Nonability, pl. 2. cites S. C.

3. But the Ordinary may make him able to take Advantage of Things Spiritual without the Head of the Church, as to be Vicar or Parson; for this is not contrary to the Profession, which is Spiritual. 3 D. 6. 24. b.

4. *Mordancestor*; because his Mother had taken upon her the Habit of Religion. The Tenant said that before the Entry into Religion, the Mother espous'd W. N. who is yet in full Life; for if he be alive, she may be Deraign'd. Contra if he died after. Br. Deraignment, pl. 9. cites 5 E. 4. 3.

(B.) *What* will be good Cause of Dereignment.

1. **I**F a Man marries a Wife, and she before Carnal Conufance enters into Religion, yet the Marriage is not good Cause of Dereignment. 18 D. 6. 83.

2. Otherwise it is if she enters into Religion after Carnal Conufance; for then by this the Marriage is compleat. 18 D. 6. 33.

(C.) Profession. *At what Time a Man shall be said a Dead Person, and Profess'd.*

1. **I**F the Freres put my Son, being an Infant, into the Habit without my Assent before his full Age, he may come back to me with my Assent, or I may retake him from them; for he is not profess'd by the Habit. 11 D. 4. 31. b.

2. So I may retake him after his full Age. 11 D. 4. 31. b. before he is profess'd.

3. If a Man enters into Religion, and is under Obedience, yet he is not a dead Person before Profession. 3 D. 6. 24.

4. For Land may descend to a Man after Entry into Religion before Profession, and may have Action for it as Heir. 3 D. 6. 24.

Br. Nonability, pl. 2.
S. C. — See
Sir Laurence
Anderton's
Case.

For more of Profession in General See **Facts**, (C) **Grants**, (C) pl. 1. **Trial**, (A) pl. 3. (O) pl. 12. 13. 14. and other proper Titles.

Profit Appender.

1. **P**rofits appender are saved by the Third Saving of the Statute of Uses. 2 And. 26. pl. 52. in the Case of Lord Cromwel v. Andrews.

2. If I grant 10 Load of *Estovers* and Hay, or such like, to be taken annually, or Common for 10 Beasts annually, to be taken in such a Place for Term of Life or Years, or otherwise, and he does not take any Thing of it for 3 or 4 Years there, in the 5th Year he shall not take 40 Load, nor can he put 40 Beasts in in the 5th Year; for then peradventure the Grantor cannot take any Thing himself this Year; for it is not like to a Rent-charge. By the Opinion of the Court. Br. Parnor de Profits &c. pl. 2. cites 27 H. 6. 10.

3. *Præcipe quod reddat* does not lie of Common, but *Quod permittat* and the like of other Profits appender, which lie in Prender and not in Render; for at the Common Law no Action lay of Profit Appender, but the *Quod permittat*. Br. Precipe, pl. 13. cites 1 E. 4. 1.

4. A. as Tenant of a Manor has Right by Prescription to take *Clay* &c. yet he can't take that which another has dug. The same of *Estovers*. Mo. 411. pl. 561. Trin. 37 Eliz. Stile v. Butts.

5. If the Lord had reserv'd *Decimam partem* of the Corn &c. he shall have Assise of it, as of Profit appender. Mo. 531. pl. 699. cites 44 E. 35. Cro. E. 509. pl. 5. Hill 40 Eliz. says, That he may have *Decimam Garbam*, but not *Decimam Garbum*.

6. Such Manner of Profits (though they are Appendant to a Frank-tenement) cannot be divided; For if such Heritage descends to Parceners, one alone shall have the intire Profits, and the other *Parcener* shall have an Allowance; also Feme shall have for her *Dower* but an *Allowance*. Finch. 36. b. And if assigned to several, must be taken jointly, As if the Grant be to dig

Turf to make Allem &c. the Assignees must work together, with the same Stock and Workmen belonging to both. Godb. 18. pl. 24. Pasch. 25 Eliz. C. B. the Lord Mountjoy's Case.

7. *Libertas Falcandi* is a Profit Appender, but a Man is not thereby Tenant or Occupier, nor can prescribe to be discharged of Tithes as such. 2 Bulf. 249. Suckerman & Coates v. Warner.

8. Licence to take a Profit in Alieno solo, need not be by Deed, where it is only *Unica Vice*, there passing no Estate in it. Vent. 25. Pasch 21 Car. 2 B. R. Rumley v. Rawson. But Profits in Appender *In alio loco*, and which are not of

Necessity, will not pass without a Deed. Cro. J. 190. pl. 13 Mich. 5 Jac. B. R. Bewdley v. Brook.

For more of Profit Appender in General, see **Common**, and other proper Titles.

Prohi-

*Prohibition

issues out of
the Chan-
cery, B. R.
or C. B.
into the Spi-
ritual Court,
Admiralty,
Court of
Chivalry &c.

to forbid a
Judge &c.
to proceed in a
Cause, that
belongs to the

Common Law Courts, or that belongs not to their Jurisdiction, though the Courts at Law can give no Remedy, or it may forbid a Judge of any Temporal Court, to proceed in a Cause depending before him, upon Suggestion that the Cognizance of the Cause does not belong to him. Wood's Inst. 570.

The King's Courts that may award Prohibitions, being informed by Plaintiff or Defendant, or by any Stranger, that any Court Temporal or Ecclesiastical, do hold Plea, where they have no Jurisdiction, may lawfully prohibit that Court, *as well after Judgment, and Execution as before*, and if the Judge of the inferior Court, or the Party, proceeds notwithstanding a Prohibition, an Attachment may be had against them, or an Action of the Case will lie against them; But upon a Prohibition in the Spiritual Court, the Party may appear and take a Declaration upon the Suggestion, and go to Trial; And if thereupon it be found against the Plaintiff in the Prohibition, a Writ of Consultation will be awarded with Costs. Wood's Inst. 570.

It is in the Discretion of a Court to deny a Prohibition, when it appears to them, that the Surmise is not true. Per Hobart Ch. J. Hob. 67. pl. 71. in the Case of Aston Parish v. Castle-Birmidge Chapel. — But all the Judges agreed, That the granting Prohibitions is not a Discretionary Act of the Court; but are grantable *Ex Merito Justitiæ*, and denied Lord Hobart's Opinion, and said, That Roll Ch. J. had frequently done so before. Raym. 3, 4 Hill. 12 Car. 2. B. R. in the Case of Woodward v. Bonithan — S. P. that they are grantable *Ex Debito Justitiæ*, and are not Honorary, and in the Discretion of the Justices. Per tot. Cur. Sid. 65. pl. 38. Mich. 13 Car. 2. B. R. in Serjeant Morton's Case. — Raym. 92. in the Case of Ford v. Weldon. Hill. 15 & 16 Car. 2. B. R. Hide Ch. J. affirmed that a Prohibition is *Ex Gratia*, and not *Ex Debito Justitiæ*, but Keyling & Twissden J. positively denied it.

* Prohibition.

(A) The Antiquity of Prohibitions.

1. 3 E. 1. Rot. **A** Prohibition was granted, and after an Attachment against the Bishop, and the Official for holding Plea after the Prohibition.

(B) Of what Things or Actions, and for what Causes it lies [where] the Judges, [before whom the Cause is brought] have not any Jurisdiction.

1. **I**F the Collector of the Pope in England holds Plea in England of Spiritual Matters, a Prohibition lies; For he has not Jurisdiction here to do it, for this belongs to the Spiritual Judges of the King in England. 3 H. 4.

See (J. a) 2. **I**F there be one intire Contract above 40 s. and a Man sues for it pl. 1. S. C. — in a Court Baron, Severing it into divers small Sums under 40 s. a Prohibition shall be granted because this is done to be defraud the Court of the King. 19. H. 6. 54.

(A) in the New Notes there (a) cites S. C. — If a Man owes unto another Man 5 Marks, and he sues several Plaints for the same in the County Court, or in any other Court, against the Debtor, he shall have a Prohibition thereof, and rehearse the Matter, and that he would defraud the King's Court of its Jurisdiction, and also the Party of his Answer &c. commanding them that they do not proceed &c. and that he command the Party to sue at the Common Law in the King's Court; And if they will not surcease, he shall have an Alias and Pluries, and Attachment upon the same &c. F. N. B. 46 (A) — So if the Executor sueth in the County, or in a Court-Baron for a Debt of 5 Marks, by divers Plaints, whereas the Debt is upon a Contract, or upon an Obligation, now the Defendant may shew the same, and plead unto the Jurisdiction of the Court, or he may have a Writ of Prohibition directed unto them, that they do surcease &c. and if he have Judgment in any of the Plaints sued for Parcel of the Debt, yet in the Prohibition, he may prohibit him in the Plaints, which are depending, and that Execution of Judgment cease for the Residue. F. N. B. 46. (A)

If there be several Contracts between A. & B. at several Times, for several Sums, each Sum under 40 s. and they do all amount to a Sum sufficient to entitle the superior Court, they shall be there put in Suit, and not

not in a Court which is not of Record; And so it was resolved in the Case of the *Savoy Court*, and *Staundforde*, 24 Car. 2. Vent. 65. pl. 1. Pasch. 22 Car. 2. in B. R. Anon.

In a Prohibition to the Court of the Honour of Eye the Case was, one contracted with another for *divers Parcels of Malt*, the Money to be paid for each Parcel being under 40 s. and he levied *divers Plaints* thereupon in the said Court; Wherefore the Court here granted a Prohibition; Because, though there be several Contracts, yet for as much as the *Plaintiff might have joined them all in one Action*, he ought to have so done, and sued here, and not put the Defendant to an unnecessary Vexation, any more than he can split an intire Debt into *divers*, to give the inferior Court Jurisdiction in *Fraudem Legis*. Vent. 73. Pasch. 22 Car. 2. B. R. *Girling v. Alders*.

3. If one sues another in the *Spiritual Court* for a *Chattle or Debt*, the Defendant shall have a Prohibition. F. N. B. 40 (H)

4. If one sues for *Trespass* in the *Spiritual Court*, Prohibition lies for the S. P. F. N. B. King or the Party unto the Judge or the Party, or both. F. N. B. 40 (M) 43 (G) ———
So of Tref-
pafs *Vi &c. Armis* sued in the *County Court &c.* the Defendant may sue a Prohibition to the Sheriff or Plain-
tiff, F. N. B. 47. (A)

5. If Bailiffs, *Mayors*, or others, who claim Jurisdiction to *arrest a Man upon a Plaint* before them, or to attach his Goods &c. do *arrest one for Trespass or Contract*, who was *not within their Jurisdiction*, the Party arrested &c. shall have a Prohibition directed unto them &c. F. N. B. 45. (F)

6. If a Man sue another in the *County Court* for *Debts or Chattles* which do amount to the Sum of 40 l. then the Party shall have a Prohibition against him who is Sheriff, that he shall not hold Plea thereof, and that he tell the Party that he sue in the Common Pleas. F. N. B. 46. (A)

So it is if a Man will sue in the County Court a Writ of Covenant or

Trespass unto his Damage of 40 s. or more, the Party shall have a Prohibition for to surcease, and thereupon an Alias, Pluries, and Attachment &c. F. N. B. 46 (A)

7. If a Man sue in the *County* a *Plaint* of 20 l. and hath Judgment to recover in that Court, yet the Defendant may sue a *Prohibition*, commanding the Sheriff and the Suitors *not to execute* the Judgment, although he has before admitted the Jurisdiction. F. N. B. 46. (A)

So after Judgment given, and Execution awarded in the County,

or in other Court-Baron, which hath not Power to hold Plea of Debt of the Sum of 40 s. &c. or of Damages in *Trespass* amounting to such Sum, or more, the Party Defendant shall have a Writ of Prohibition unto the Bailiffs, or the Under Sheriff or Officer of the Court, that they make not Execution; and if they have distrained the Party to make Satisfaction, that then they *release the Distress*, and that they revoke what they have done therein. F. N. B. 46. (A)

8. If one Man sueth another in a Court-Baron, or other Court, which is not a Court of Record, for *Charters concerning Inheritance or Freehold*, he shall have a Prohibition, F. N. B. 47. (B)

9. A Prohibition was moved for to the *County Court* to stay a Suit there in Debt for *Tithes on a Justicies*; For that it is not *Debitum ex Contractu*, but *Ex delicto*, founded on a Statute, of which the Sheriff cannot hold Plea, and the Justicies doth not enlarge his Jurisdiction to other Actions, but only enables him to hold Plea of greater Sums than by his ordinary Jurisdiction he could; The Court held it to be a very considerable Case, and directed a Suggestion and a Declaration thereupon, that the Defendant might plead or demur, and so the Matter might come judicially before the Court. 1 Lev. 253. Mich. 20 Car. 2. B. R. Bishop v. Corbett.

S. C. 2 Keb. 416 420. and that he was informed the Court inclined strongly that it did not lie.

10. An Action of Debt on a Judgment in B. R. was brought in the *Marshalsea*, and therefore a Prohibition was granted. 2 Salk. 439. in pl. 2. an Anonymous Case, cites it as Trin. 11. W. 3. B. R.

(C) *Jurisdiction Spiritual.*

Sure Facias against Deputor of the King in the Exchequer, who came and prayed Process against A. Parson of O. who had Part of his Goods, by which he could not pay, and he came and claimed them as his Tithes, and the other claimed them as his Tithes, as Parson of S. and the other thereupon pleaded to the Jurisdiction, Et non Allocatur; But the Exchequer held Plea, because it was the Suit of the King, and in his Behalf; But it is said there, Quod mirum est! and that B. R. nor C. B. will not hold Plea of Tithes as here. Br. Jurisdiction, pl. 90, cites S. C. — Br. Prerogative, pl. 74, cites S. C.

The King has Tithes in the Forest of Inglewood &c. which are not in any Parish, and grants them to another, who brings Sure Facias against those who received them before; In this Case the Temporal Court shall have Jurisdiction. Br. Prohibition, pl. 25, cites 22 Aff. 5. — *But if they be in Variance who ought to pay the Tithes and who ought to have them, the Spiritual Court shall have thereof Jurisdiction.* Br. Prohibition, pl. 23, cites 22 Aff. 5.

2. A Libel was against H. questioning some Matters as to the Validity of his *Induction* to the Church of S. but a Prohibition was granted, because the very *Title of the Patronage in this Case came in Question*, which they ought not to meddle with; Besides, the Validity of Induction is triable at Common Law, and not in the Spiritual Court. 1 Bulst. 179. Trin. 9. Jac. Holt's Case.

3. Suits for *Adultery*, unless *exorbitant and notorious*, ought to be brought before the proper Ordinary. Per Hutton J. said to have been so rul'd. Cro. C. 114. Trin. 4 Car. Isabel Peel's Case.

4. L. C. was excommunicated upon a Libel against him, founded upon a Presentment by the Churchwardens for not receiving the Sacrament in his own Parish Church, and suggested for a Prohibition; that he had alledged and shewed to the Official a Certificate that he had taken it elsewhere. The Court held that the Ecclesiastical Court had Conusance of the Cause, and had good Cause to proceed upon the Presentment *Prima Facie*; and that it lies on his Part to prove that he received it elsewhere, and upon such Plea a Prohibition lies, but not else. And because it did not appear to the Court that this was pleaded in the Spiritual Court, nor was there any Affidavit made of it, the Court denied to grant a Prohibition, and being moved twice afterwards the Court denied to grant a Prohibition, because the Cause was purely Spiritual, and they proper Judges of the Certificate; and that if they refuse the Plea, an Appeal will lie, but no Prohibition; besides the Allegation in the Certificate, (viz.) that he hath received the Sacrament elsewhere, is not sufficient; because, by the Rubrick, he is to receive it three Times a Year, and so the Effect of the Libel not answered. Hard. 406. Pasch. 17. Car. 2. in the Exchequer. Copley's Case.

5. A Libel was against the Plaintiff for keeping *Conventicles &c.* and this was ex *Promotione A. B. Publick Notary*; neither the Libel or Articles alleg'd any Presentment of this Matter, but the Register swore that a Presentment was made by the Curate of the Parish where &c. and that a Copy by him delivered into Court was a true Copy thereof. It was insisted for the Plaintiff in the Prohibition, that no Man ought to be prosecuted in the Spiritual Court to answer Articles ex *Mero Officio* as here he was, without a due Presentment. And so is the Statute 25 H. 8. cap. 14. as to the Prosecution for Heresy, but the Reason thereof extends to other things as well as to Heresy: Indeed that Statute is repealed, but my Lord Coke, in 12 Rep. 26. observes, that it was herein declaratory of the Common Law, and that tis very reasonable that there should be a Presentment and Accusation by some proper Person; For otherwise an inno-

cent Person, in Case of false Accusation, would not know where to have Remedy. A Prohibition was denied; And it was said by Wylde J. that they must judge upon the Suggestion only, and the suggesting the Proceedings to be *ex Officio*, may be understood either of a proceeding *Officiose* of his own Head; or, that it was according to his Duty; and here nothing appears but he did so. But if the Plaintiff had suggested that the Law required a Presentment by such Persons and in such a Manner &c. he might have brought that into Question. And of the same Opinion were the other Justices, and that Faith and Credit ought to be given to their Proceedings. But Tyrrel J. held, that if it had been suggested, That No Presentment by a Curate was sufficient, Nor unless it were upon Oath &c. he should have been of Opinion for a Prohibition. And Vaughan Ch. J. said that if the Articles were exhibited merely *ex Officio*, viz. out of the Mind of the Chancellor himself, they were not warrantable; But that there is no Colour for this Suggestion, because they appear to be by the Information of a Publick Notary. 2 Vent. 41. Pasch. 22. Car. 2. C. B. Grove v. Elliot.

6. The Plaintiff being Parson of S. in D. and having a Dispensation for two Benefices, agreed with the Defendant for 22l. to serve the Cure of S. The Defendant made his Application to the Bishop to enlarge his Stipend; the Bishop ordered that he should allow him 32 l. per Ann. The Plaintiff paid him his 22l. according to Agreement; and he libelled against the Plaintiff for the Addition by the Bishop in the Spiritual Court, and the Plaintiff prayed a Prohibition. The Defendant's Counsel insisted, That this being an Allowance by Order of the Bishop, was properly suable in the Ecclesiastical Court, and cited 3 Cro. 675. Nat. Br. 51. 4 Inst. 491. But the Court granted a Prohibition; For there being a Contract between the Parties, the Bishop had no Power to make any Order; But if the Curate had served the Cure, and made no Agreement, then the Bishop might have allowed him what he thought reasonable, in the Nature of a Quantum meruit; and a Prohibition was granted. Freem. Rep. 70. pl. 84. Hill. 1672. C. B. Pierfon v. Atkinson.

7. Sr. O. B's. Lady sued him in the Spiritual Court for Alimony; and he moved for a Prohibition, and suggested, That he had, by Indenture, convey'd over Lands to Trustees of the Value of 300 l. per Ann. for her separate Maintenance; and that they shewed this in the Spiritual Court, but they refused to admit it &c. Per Cur. no Prohibition; For this Court cannot take Notice of a Deed of Trust; But if it be proper for them to move for a Prohibition any where, they must go into Chancery; for the Execution of Trusts properly belongs to them. But besides, Alimony is a Thing that the Ecclesiastical Court has properly Conscience of; and if there be a separate Maintenance already, they will take it into Consideration, at least by Way of Defalcation in Alimony; and if the Party be charged too hard, he may have his Appeal. Freem. Rep. 282, 283. pl. 324. Trin. 1673. C. B. Sir Oliver Butler's Case.

8. A. had Issue 3 Daughters, B. and C. the two Plaintiffs, and D. and A. dying intestate, M. his Wife administrated and dyed, and made the two Plaintiffs her Executrices, who had several Bonds, some in their own Names, and some in the Name of M. to whom they were Executrices; they also took out Administration De Bonis Non to the Father. It was suggested in the Spiritual Court, that some Bonds which they had in their own Names were in Trust for their Father; and that some Bonds in the Mother's Name, were Debts owing to the Father, but the Mother, being Administratrix, had alter'd the Property, and taken them in her own Name; D. sued for Distribution of these Debts. As to the first Part, the Court were of Opinion that a Prohibition should go; For a Trust is not examinable in the Spiritual Court; for they are not a Court of Equity. Freem. Rep. 283, 284. pl. 327. Trin. 1674. C. B. Miller's Case.

9. The

9. The Mayor and Aldermen of Bristol presented A. to the Parish-Church of C. in that City, and the Defendant *libelled* against him in the Arches, for *that he was not 23 Years old when made a Deacon, nor 24 Years old when he entered into Priest's Orders*; and the Statute of 13 Eliz. cap. 12. requires, that none shall be made a Minister, or admitted to preach, under that Age. It was *suggested* for a Prohibition, *that this Matter was triable at Law*, and not in the Spiritual Court; *because, if true, a temporal Loss, viz. Deprivation, might follow*. But the Court denied the Prohibition, and compared the Case to that of a Drunkard or ill Liver, who are usually punished in the Spiritual Court, tho' a temporal Loss may ensue. 3 Mod. 67. Pasch. 1 Jac. 2. B. R. Roberts v. Pain.

S. C. 6 Mod. 188. Trin. 3 Annæ. And per Holt Ch. J. If the Libel be grounded upon the Statute of 1 Eliz. they may compel you to come to your Parish Church; For that Statute does directly subject People to the Ecclesiastical Law in this Point. Afterwards a Prohibition

10. The Parson libelled against the Defendant for *not coming to his Parish Church on Sundays*. Defendant *pleaded* that *he went to another Church more commodious for him*. A Prohibition was granted, and Plaintiff declared therein. The single Question was, Whether a Parishioner is compellable to go to his Parish Church? It was insisted that he was; because every Parson is obliged not to allow a Parishioner of another Parish to partake of Sacraments with him, and by the Act of Uniformity every Man is required to resort to his Parish Church. To this it was said, that the *Distribution into Parishes was by the Common Law*, and in consequence thereof the People were brought under a new Obligation, such Obligation ought to be examinable at Common Law. The Court agreed, That an entire Neglect to go to any Church, is punishable in the Ecclesiastical Court; that this Matter was of Ecclesiastical Consuance, and that *Prima facie* it was a good Charge, that a Man went not to his Parish Church. And they seemed of Opinion, that tho' the *Act of Uniformity* be taken as introductive of a new Law, yet the thing being purely of Ecclesiastical Consuance, and proper for their Examination, a Consultation ought to go. But there was no Resolution. 1 Salk. 166. Hill. 3 Annæ. B. R. Britton v. Standith.

Prohibition was granted, and ordered to declare forthwith.

11. If a Man be proceeded against as an *Heretick* in the Spiritual Court, Pro Salute Animæ, and thinks himself aggrieved, his proper Remedy seems to be to bring his *Appeal to a Higher Ecclesiastical Court*, and not to move for a Prohibition from a Temporal one, which, as it seems to be agreed, cannot regularly determine or discuss, what shall be called Herefy. Hawk. Pl. C. 4. cap. 2. S. 9.

(D) In what Cases the Court shall not be ousted. In Respect of Collateral Things.

1. **I**N Trespafs, if the Right of Tithes comes in Debate between a Parson and a Layman, being a Farmer of another Parson, the Court shall not be ousted of Jurisdiction. 20 H. 6. 17. b.

2. In an Annuity between Spiritual Persons by reason of certain Churches chargeable, grounded upon the Deed of Grant of the Predecessor of one, tho' the Persons and Thing, out of which it issues, are spiritual, yet by Reason of the Deed the Court shall not be ousted of Jurisdiction. 29 E. 3. 39. b. Adjudged.

3. If the Patron has *Indenture to go quit of Tithe of Cheese &c.* and is sued in the Spiritual Court for those Tithes, he shall have Prohibition upon this Indenture. Br. Prohibition, pl. 21. cites the Register 33.

4. If a Woman hath Title to sue a *Cui in Vita*, and she swears unto the Tenant, that she will not sue the *Cui in Vita* against him; if the afterwards sueth forth the Writ, for which the Tenant sueth her in the Spiritual Court for Breach of her Oath, she shall have a Prohibition, because the Oath toucheth a Temporal Thing, viz. Lands. F. N. B. 42 (1).

5. If Slander, or * laying violent hands upon a Clerk, happen upon a Temporal Cause, and the other sues for it in the Spiritual Court, Prohibition lies; and therefore it seems that of † those Defamations, by which the Party is damaged, the Spiritual Court cannot hold Plea; For it is said, that Crimes of Falsity and Adultery appertain to the Spiritual Court, and Consultation shall be thereof granted; and the same it seems of Usury. Br. Action sur le Case, pl 115. cites the Register 54.

* As for arresting him at Common Law, and he sues in the Spiritual Courts, Prohibition lies. Br. Prohibition.

pl 21. cites Register fol. 42. and Quære fol. 51. — † As because he gave Evidence against the Plaintiff who was indicted, and he sues in the Spiritual Court for Defamation, a Prohibition lies. Br. Prohibition, pl. 21. cites Register fol. 42.

6. When the Original begins in Court Christian, altho' that afterwards a Matter happens in Issue which is triable by our Law, yet this shall be tried there by their Law; As if one do sue there for a Horse to him devised, the Defendant there pleads, that the Devisor did give this Horse unto him in his Life-time; this is triable by our Law, yet the same shall be try'd there. 2 Bulst. 227. Pasch. 12 Jac. Parker v. Kemp.

So where one sued in the Spiritual Court for Titles of Apples; the Defendant pleaded there

an Award, and then prayed a Prohibition, for that an Award is Matter triable at Law; but it was denied by the Court. So if a Suit is for a Legacy, and the Defendant suggests Perverse; or if an Acquittance is pleaded, no Prohibition shall go; Because where the Spiritual Court has Cognizance of the principal Matter, there a Matter subsequent and dependant upon it, which is triable at Common Law, shall not deprive the Spiritual Court of their Jurisdiction; But it was said by Coke, and agreed by Doderidge, that if that Court should adjudge otherwise upon an Acquittance, or an Award, than according to the Common Law, in such Cases a Prohibition should go. 1 Roll. Rep. 12. Pasch. 11. Jac. B. R. Anon. S. C.

So where the Churchwardens libelled for a Church Rate which was sentenc'd against them, and then they appealed to the Metropolitan; but pending the Appeal, one of the Appellants released to the Appellee all Actions, Suits and Demands; but the other Appellant proceeded in his and his Partner's Name to reverse the Sentence? whereupon the Appellee pray'd a Prohibition, and suggested this Release, supposing that it discharged the Appeal. But upon Demurrer it was adjudg'd by all the Judges Una Voce, that Prohibition lies not upon this Suggestion; Because the Temporal Court has nothing to do to meddle with the principal Matter, that being merely spiritual, and to be determined in Court Christian; And since the Ground of this Suit belongs to that Court, all Things dependent thereupon will belong to them also. And whether this Release will bar both the Churchwardens or not, shall be determined there, and not in B. R. Yelv. 172. Hill. 7 Jac. B. R. Starkey v. Barton and Gore. — Cro J. 234. S. C. but not exactly S. P. — Noy 129. S. C. by Name of Gore v. Stark. — So where Churchwardens after the Year, were cited into the Spiritual Court to make a Presentment Per Vim Juramenti taken by them as Churchwardens, whereupon they presented F. for not coming to Church; and it being suggested for a Prohibition, that this was the same as citing one Ex Officio; For that the Determining of the Office determin'd the Oath, Atkins J. was of Opinion for a Prohibition; but North, Widdham, and Scroggs e contra; For 1st. Where a Matter is wholly of Ecclesiastical Cognizance, there, tho' they proceed irregularly, no Prohibition shall go, but the Remedy lies by Way of Appeal. And here this Presentment, tho' it be after the Party is out of his Office, yet whether this may not be by their Rules and Canons Non constat to this Court. Where a Matter is of Ecclesiastical Cognizance, if a Matter determinable at Common Law intervene, they shall try that, except it be in Case of a Modus, which by Law they cannot try; as if a Legacy be sued, and a Release pleaded, they shall try this Release; but then it must be with this Difference. That when they try an incident Matter determinable at Common Law, by Reason of their Jurisdiction in the principal Matter, there they shall be tyed up to the Rules of Common Law; As in the Case, if a Release be pleaded to a Legacy, and and there be but one Witness, or else the Witness is dead, and they will not admit of proving Hands, nor allow one Witness for a Proof, they shall be prohibited; For altho' those Matters come under their Cognizance as Incidents, yet being Matters originally of Temporal Cognizance, they shall go according to the Rules of Common Law. Freem. Rep. 290. pl. 341. Trin. 1677 C. B. Anon. — S. P. And so where Libel is for the Titles of such a Case, and the Defendant pleads that it is not his Case, but the Case of another Person; this shall be tried in the Spiritual Court. Sid. 89. Mich. 14 Car. 2. B. R. Butler v. Yateman.

Where an Ecclesiastical Court has Original Jurisdiction of a Cause, yet there is said to be a Difference in the Case of an Ecclesiastical and Lay Person, viz. that in the Case of the first, their Sentence may not be examined in the Temporal Court, but in that of the other it may; Quære tamen Arg. Skin. 493. Trin. 6 W. & M. B. R. In the Case of Philips v. Bury.

12 Rep 67. takes the same Diversity ; but if Issue be taken at Common Law upon a Matter there, and which is

triable by the Spiritual Law, in such Case the Judges of our Law shall write to the Judges of the Spiritual Court to try it, and to certify, which they cannot do to the Judges of our Law. *Resolv'd per tot Cur. Mich. 8 Jac. in Roberts's Case.*

7. *So where the Original begins here, and a Matter happens, the same shall be tried here by our Law ; as in a Quare Impedit, Able, or Not able. If it were otherwise, they should there try nothing ; This is belonging to them ; But if they will there draw the Matter, Ad aliud Examen, As upon Proof of a Deed, they judge otherwise than we do, as in case of a Lease for Years to be made, they hold the same must be Traditione, or void ; and so of Grant of Goods to be delivered, or not good, in such Case we will prohibit them.* 2 Bull. 227, 228. Pasch. 12 Jac. Parker v. Kemp.

8. *A Bishop granted the Office of Commissary and Vicar-General within his Diocese to Dr. B. for Life, with all Fees &c. thereunto belonging, which Grant was confirmed by the Dean and Chapter ; Afterwards the Bishop inhibited the Register from entering Acts by the Doctor, or paying him any Fees ; and thereupon the Doctor libelled against the Bishop for disturbing him in his Office ; and the Bishop suggested for a Prohibition, that this concerned Freehold, viz. the Office which was granted for Life ; But per Ley Ch. J. Doctor B. may have a Prohibition against the Bishop for a Disturbance.* 2 Roll Rep. 306. Pasch. 21 Jac. B. R. Doctor Barker v. Bishop of Oxon.

9. Prohibition was moved for to the High Commission Court, where a Parson libelled for an Assault on him. And though they have an express Authority by their Commission to meddle in such Affairs, yet because this would make all the Ordinaries in England be to no Purpose, the Prohibition was granted. Herley 19. Pasch. 3 Car. C. B. Giles v. Balam.

Raym. 88. Sharrock v. Boucher S. C. and the Suggestion was, that the Prebendary and his Farmers, Time out of Mind had had the Granting the said Office, and that the Defendant pretended

10. *A Prebendary who had a Peculiar Jurisdiction leased his Prebend with all Profits, Commodities, and Advantages &c. thereto belonging. The Question was, Whether the Ecclesiastical Jurisdiction passed to the Lessee, so that he might make a Commissary to hold Courts or not. The Ch. J. and Windham held, that he could not ; For this is annexed to the Spiritual Person, and not to the Lay Corps of the Prebend ; and Windham said, that the Commissary is only a Deputy of the Prebendary, which his Lessee cannot make for him ; but Keeling and Twisden contra, and held it annexed to the Corps of the Prebend, and passed with it. But this being the first Motion, the Plaintiff was ordered to declare upon his Suggestion, and the Defendant to demur upon it, and so the Point to come judicially in Question.* Lev. 125. Hill. 15 & 16 Car. 2. She-rock v. Boucher.

that the Disposal thereof belonged to the Dean and Chapter of L. who libelled for it in the Spiritual Court, and so the Freehold of it would come in Question. The Court was divided ; But afterwards Hide said, That the Right of the Office did come in Question, and thereupon a Prohibition was granted.

11. *Spiritual Court may proceed upon an Act of Parliament, or other temporal Matter incident, so long as they proceed according to the Rules of the Common Law.* 2 Lev. 64. Trin. 24 Car. 2. Juxon v. Biron.

S. C. by the Name of Haughton v. Wilson. Freem. Rep. 129. pl. 151. accordingly, Ellis J. absente, and reports, that the other part of the Libel was

12. *A Proctor libelled for his Fees, and upon praying a Prohibition it was said by Vaughan Ch. J. and Windham J. That no Court can better judge of the Fees which have been due and usual there than themselves, most of which are appointed by Constitutions Provincial, and thereby they prove them. And they granted a Prohibition as to some Particulars in the Libel which were of temporal Cognizance, but not as to the Suit for the Fees. Windham said, that if there had been an actual Contract upon the Retainer, the Plaintiff ought to have sued at Law. But Atkins J. thought a Prohibition ought to go for the whole ; because, as he said, Fees had no Relation to the Jurisdiction of the Spiritual Court, nor to the Cause in which the Proctor was retained ; that the Proctor might have*

have Action on the Case, the Retainer being an implied Contract. But for the Expenses of a Journey, and Charge of a Messenger
a Prohibition was granted Quoad &c. Mod. 167. pl. 5. Mich. 25 Car. 2. C. B. Horton v. Wilfon.

&c. which being as Things grounded on a Contract, or Quantum Meruit, the Spiritual Court cannot try them, but as to the customary Fees they may; though if the Custom be controverted a Prohibition shall go. And that Atkins J. who was for a Prohibition for the whole said, that Fees differed from Costs; For they may give Costs, which are Part of the Suit and Decree, as at Common Law it is Part of the Damage of the Party, and in the same Judgment; And reports, that Windham doubted, whether the Proctor could recover his Fees by an Action of the Case. — But upon a like Question it was held per Cur. That it is Custom and not the Authority of Constitutions, which intitles Proctors &c. to their Fees, and that an Action will lie for them at Common Law, and therefore the Spiritual Court ought to be prohibited; And the Rule was, That they should declare upon the Prohibition. 4 Mod. 254. Hill. 5 W. & M. B. R. Johnson v. Oxenden.

13. Libel in the Spiritual Court by *Clark of a Parish for 4 d. per Annum* due to him by Custom from every Matter of Family in a Parish; Defendant denied the Custom; Prohibition was granted, because Custom is not triable there except in Case of *Pensions*. 12 Mod. 260. Hill. 11 W. 3. B. R. Pollard v. Awker.

14. Administration was committed to a Woman as Widow of T. S. and a Libel was in the Spiritual Court to repeal the Administration, upon Suggestion that T. S. had a former Wife living at the time of his Death; a Prohibition was granted. Per Holt Ch. J. 12 Mod. 432. Mich. 12 W. 3. in Case of Hemming v. Price, and cited 7 Rep. 43. b. 44. a. Kenn's Case; and Style's Rep. 10.

15. Solicitation to Incontinence coupled with Force and Violence does, by reason of the Force which is Temporal, become a Temporal Crime In Toto. 2 Salk. 552. Mich. 1 Ann. B. R. Galizard v. Rigault. But if one commits Adultery, and Husband brings Affair

and Battery, this shall not hinder the Spiritual Court; For it is a criminal Proceeding there, and no Indictment lies at Common Law for Adultery. Per Holt Ch. J. 2 Salk 552. cites 1 Roll. 295. 2 Inst. 488.

16. A Libel was for *Easter-Officings*, suggesting that they had, Time out of Mind, used to be paid in that Parish. The Defendant made no Defence at all in the Spiritual Court; but after Sentence against him moves the Court of B. R. for a Prohibition. The Motion was granted *Nisi*. The Reason why the Court doubted, whether the Prohibition was to be granted or not, was their Ignorance of the Practice of the Spiritual Court; for the Court seemed clearly of Opinion, that if the Practice of the Spiritual Court was agreeable to that of the Courts at Law, viz. to take every Thing *Pro Confesso* against a Defendant that makes no Defence, and so give Sentence for the Plaintiff without obliging him to prove the Truth of this Case, then the Prohibition was not to be granted; because the Custom set forth by the Plaintiff was not denied by the Defendant, and consequently no Occasion for Trial of the Custom. But in Case the Practice of the Spiritual Court was not to give Sentence for the Plaintiff even in Case of no Defence made by the Defendant, without Proof made to the Court by the Plaintiff of the Truth of his Case, that then a Prohibition was to be granted; because then the Sentence of the Spiritual Court was founded plainly upon Proof made before them of a Custom, which is not to be permitted, because the Proof required by them, is very different from that required by Common Law. Doctor Pinfold, who spoke against the Prohibition, ingenuously owned, That it was the Practice of the Spiritual Court to require Proof. However, the Court took Time to consider, and would not make the Rule absolute. 10 Mod. 440. Trin. 5 Geo. B. R. Doctor Bows v. Jurat.

(E) *What Pleas shall oust the Court of Jurisdiction.*

Fol. 282.

Br Jurisdiction, pl. 31. cites 38 E. 3. 6 and pl. 51. cites 39 E. 3. 23.

—S. P. that because they were at Issue upon the Place, the Issue was accepted, and the Defendant compelled to answer, where he should have answered to the Jurisdiction. Br. Jurisdiction, pl. 30. cites 5 H. 5. 10.

1. **I**F the Issue be whether the Place where the Tithes were be in the Parish of one Parson or of another, the Court shall not be ousted of Jurisdiction. 50 E. 3. 20. b. 20 H. 6. 17. b. 22 E. 4. 22. 38 E. 3. 5. b. 39 E. 3. 23. b.

2. **I**f the Issue be, whether the one Parson has by Prescription a Portion of Tithes in the Parish of the other Parson, this shall not oust the Court of Jurisdiction, because 40 Years by the Spiritual Law is good Prescription, which it is not at the Common Law. 20 H. 6. 17.

S. P. because they meddle with that which is out of their

Jurisdiction, tho' the original Thing be of their Conusance, and this comes in obliquely. Arg. Show. 10. Mich. 4 Jac. 2. in Case of Clarke v. Andrews — For the Bounds of Parishes are triable at the Common Law. But the Court denied a Prohibition, because it did not appear that a Plea thereof had been offered in the Ecclesiastical Court. Vent. 335. Anon.

A Prohibition shall not be granted on a bare Surmise that he is sued for Tithes by the Parson of D. of Lands in the Parish of S. unless it appears in the Pleading in the Spiritual Court. Noy. 147. Phillips v. Slacke.

4. In Trespass by the Abbot against the Parson, of Corn carried away, the Defendant pleaded Composition, and concluded to the Jurisdiction for Tithes; Per Morrice, the Composition goes in Bar, and therefore you have affirmed the Jurisdiction. But per Thorpe and Mombray, No, where he concludes to the Jurisdiction and not in Bar. Quære. Br. Jurisdiction, pl. 35. cites 38 E. 3. 19.

5. In Trespass of Corn the Defendant claimed them as Tithes, if his Plea and Conclusion goes to the Action, the Common Law shall take Cognizance; Per Finch; Quod non Negatur. Br. Jurisdiction, pl. 12. cites 46 E. 3. 9.

6. If a Man sues in Court Spiritual for a Legacy or Devise, where the other alleges a Gift of it, yet the Spiritual Court shall have Jurisdiction; and this, notwithstanding that the Party be not Executor nor Administrator. Br. Jurisdiction, pl. 13. cites 46 E. 3. 32.

7. Trespass by a Parson against a Prior, of a Close broken and Gra's spoiled, the Defendant said, that it is his Glebe, and the Plaintiff claiming it as his Glebe entered &c. Judgment if the Court will take Cognizance; & non allocatur; for Trespass done upon his Franktenement cannot be tried in Court Spiritual. Br. Jurisdiction, pl. 41. cites 19 H. 6. 20.

S. C. Cro. E. 655. pl. 18. Hill. 41 Eliz. B. R. reports, That the Defendant in the Spiritual Court pleaded further, That

on his laying his Hands peaceably on the Plaintiff there (the now Defendant) the Plaintiff there made an Assault upon the now Plaintiff, and the now Plaintiff defended himself; and that if the Defendant here had any Hurt, it was De son Assault demesne. The Defendant here confess'd, That the Plaintiff here pleaded such Plea there; but shew'd, That the Plaintiff here was condemn'd there for Non-Attend-

8. Prohibition was awarded upon a Suggestion, That the Defendant was a Clerk, and assaulted the Plaintiff's Servant, whereupon the Plaintiff peaceably laid his Hands on the said Clerk, and that he had alleg'd the same in the Spiritual Court, and they would not allow it. And it was rul'd and adjudg'd, That the Prohibition should stand, notwithstanding the Statute De Articulis Cleri, cap. 3. Mo. 915. pl. 1297. Mich. 31 Eliz. B. R. Kelly v. Walker.

ance, and travers'd the Refusal of the Plea. Gawdy held, That this Cafe was out of the Statutes of Articuli Cleri, and of Circumfpecte agatis. for here the Party had good Cause to beat the Clerk, and as to the Traverse, it is not good, for *the Summe is not traversable*. And adjudg'd for the Plaintiff.

9. A *Presentment* was Ex Officio in the Ecclesiastical Court, for not frequenting his Parish Church; he pleaded, That *this was not his Parish Church*, but that he had used to frequent another Parish Church, and to resort to this. And upon Refusal of this Plea he had a Prohibition, for that Court cannot determine the Precincts of Parish Churches, nor judge what shall be said a Man's Parish Church; And so was the Opinion of the whole Court, and therefore a Prohibition was granted. Bullt. 159. Trin. 9 Jac. Anon.

10. The Executors gave Bond to Legatee for Payment of his Legacy. It was held by Doderidge J. That the Obligee might either sue in the Court Christian for the Legacy, or at Common Law upon the Bond; for that the Taking of the Obligation for the Payment had not totally destroy'd the Nature of the Legacy. 2 Roll. Rep. 160. Pasch. 18 Jac. B. R. Gardiner's Cafe.

S. C. cited 8 Mod. 328. Mich. 11 Geo. 1. in the Cafe of Cuband v. Dewsbury. But the

Court there was of a contrary Opinion; for that the Legacy was drown'd in the Bond, and that the Opinion of Judge Doderidge was not Law.

11. Upon a Libel for *Tithes*, the Defendant suggested, That the Lands where &c. are Parcel of Hackney Marsh; and that Time out of Mind there was a *Modus* of 18 s. The Defendant had a Prohibition. A Consultation was pray'd, because the Defendant had not proved his Suggestion within 6 Months according to the Statute; for he brought 2 Witnesses, who proved only, That they heard that for 40 or 50 Years last past, no Tithes in kind had been for these Lands, but a certain Sum of Money. But Per Ley Ch. J. in many Cafes, by the general [Word] (Proof) is to be understood (Concluding Proof) such as may persuade a Jury &c. But by him and Doderidge J. the Mischief was, That Persons were delay'd by false Suggestions, and therefore the Statute ordain'd, That all Suggestions should be prov'd; But this means, That it should be by a Probable, and not by a Strict and Concluding Proof. And by Doderidge, the Strict Proof shall be afterwards upon the Traverse before the Jury; And Consultation was not granted. 2 Roll. Rep. 434. Trin. 21 Jac. B. R. Pagget's Cafe.

12. A Surmise that the *Tithes belong to the Vicar, and not to the Parson*, will not be a good Ground for a Prohibition; for the Right of Tithes is confessed by it, and whether they belong to the one or the other, is merely Spiritual. Noy. 147. Randal v. Knowles.— And cites it as so rul'd in one Bushell's Cafe. And in one Milbray's Cafe.

13. In any Plea in the Spiritual Court, where a Custom is alleg'd and denied, a Prohibition shall be granted. Per Jones. Lat. 48. Anon.

14. The Count on a Prohibition was, That all Customs are triable at Common Law, and that the Defendant libelled against him in the Ecclesiastical Court, shewing That all Farmers of such a Farm have used to find Cakes and Ale at the * Perambulation of the Parish, to the Value of 8 s. out co circiter; and averr'd, That there is no such Custom, and that he alleg'd so in the Spiritual Court, but they refused the Plea. The Defendant pleaded, That there is such a Custom; Upon which the Plaintiff demurr'd. Adjudg'd, That no Consultation shall go; for the Custom in Farmers is no more than a Prescription in Occupiers, which, according to *Cartwright's Cafe*, is not good in Matters of Charge on the Land. 2 Lev. 163. Hill. 27 & 28 Car. 2. B. R. Welby v. Herbert.

The Court at first inclin'd strongly, that the Custom was good; But Adornatur. 3 Keb. 600 pl. 15 S. C. — But afterwards Exception was taken, That this Prescription by a Pa-

rish for a *Prescription* is void, and the Value being certain or not is not material, tho' For none tenure a Man may be bound to such a Charge, yet not by bare Prescription; for here none can release this Charge, neither Parson nor Churchwardens; And this is not like an Ediment of Rolling at such a House or Pulling up a Badge; which the Court agreed; this being originally a Kindred, like the Lord Carlisle's Verdon P. ly to the Judges in the Circuit, and Lord Bedford's Wire and Cakes. And to bring it in as a Custom would destroy all Civility, and it is a Prescription for an Interest as much as for a Charge; And Judgment for the Plaintiff in the Prohibition. 3 Keb. 600 S. C.

* In the Perambulation of a Parish, no Refreshment can be claimed by the Parishoners, as due of Right from any House or Lands in virtue of Custom. The making good such a Right upon that Foot has been twice attempted in the Spiritual Court (13 Jac. 1. & 27, 28 Car. 2.) But in both Cases Prohibitions were granted, and the Custom declared to be against Law and Reason. 1 Gibb. C. 239.
† See (Occupier)

It is no certain Rule, that a Thing triable at Law is not triable in Court Christian, as laying Violent Hands on a Clerk, a Pension by Prescription &c. 3 Lev. 17. in Case of Cranden v. Walden.

15. A. procured a Will out of the Prerogative Court, and gave Bond, with Condition to redeliver it by such a Day, but he not doing it, the Spiritual Court proceeded against him *Pro Lessione Fidei*, and to have the Will again into Court; The Defendant pleaded his having given Bond, and that a proper Remedy lay thereupon; but the Court rejecting that Plea, A. moved for a Prohibition; But it was objected, That the Witnesses to the Bond was dead, and probably, if put in Suit, they might not recover, besides, the Penalty might fall short of the Damages sustained by those interested in the Lands conveyed by this Will, by not having it produced, so that a Power to enforce the bringing it in seems necessary; Besides that, it is in the Party's Election either to put the Bond in Suit, or to sue in the Spiritual Court. The Court inclined to grant a Prohibition. 8 Mod. 327 Mich. 11. Geo. 1. Cuband v. Dewsbury.

(F) *Jurisdiction Spiritual. Jurisdiction of the Thing.*

If one sues another in the Spiritual Court for a Lay Fee, which is Lands or Tenements &c. he shall have a Prohibition to the Court, and may have another Writ to the Party himself. F. N. B. 40. (I)

1. **I**D. de Anesse pardonatur, for suing in Court Christian de Catris Villis Maneriis &c. & aliis Laicis Feodis & Placitum inde prosequi præsumendo in Enervationem Juris nostri Regii & exheredationem Coronæ nostræ & Subversionem Stat. Regni nostri manifestam. 31 E. 3. Rot. Patentium & Consimile. M. 11. ib. M. 12. Consimile 4 E. 2. Rot. Pat. M. 6.

2. Mirror of Justices, fol. 27. cap. 2. S. 13. because he held Plea against the Defence [Prohibition] of the King, and in Prejudice of the Dignity of his Crown, for as much as it belongs to no Judge Ecclesiastical to hold away secular Plea, except of Testament and Matrimony in Prejudice of the Power of the King.

Watf. Comp. Inc. 8vo. 415. cap. 21. cites S. C.— An Incumbent was instituted by the Vicar General, and afterwards was inducted. Afterwards the Bishop contested this in

3. If a Man be admitted, instituted, and inducted to a Church, and after he is sued in the Spiritual Court for the Institution, supposing it not to be good, and so to have it to be defeated, a Prohibition shall be granted; Because by the Induction, the Patron has the Church as a Lay Fee, and therefore the Common Law shall be preferred before the Spiritual Law, and shall draw the Trial of the whole to it; For otherwise by [this] all Quare Impedits shall be overthrown; For by this Means they may try all Rights of Patronages in the Spiritual Court. Tr. 15. Ja. B. a Prohibition was granted in one *Wilson's Case* accordingly. Hill. 15 Ja. B. R. between *Hutchin and Glover*, Resolved, per totam Curiam.

the Spiritual Court in Ireland; But upon a Writ of Error brought Here, it was agreed by Hol. Ch. J. Powell, Powis and Gould J. That after such Induction, which is good De Facto, the Institution shall not be controverted in the Spiritual Court, and so reversed a Judgment given in Ireland Holt's Rep 599. to 603. Hill. 4. & Trin. 5 Annæ Gibbons v. Bishop of Cloyne, &c contra.

S P. Litt. R. 165. Stevens v. Crisp. — S. P. Poph. 133. in Kneve's Case.

4. Mich. 15 Car. B. R. between *Phipps and Hayter*, per Curiam, Prohibition granted for the Church of Tuffant Elias in the County of Wilts, where the Suit was in the Arches after Induction to avoid the Institution, because the Institution was made after a Caveat entered, not to institute &c. For this does not make the Institution void

void in our Law. *Hobart's Reports*. 22. *Hutton's Case*. Prohibition granted. S. P. Show. 10 Mich. 4 Jac. c. n.

in the Case of *Clark v. Andrews*, cites *Hob. 15*. Sir Timothy *Hutton's Case*.

5. If a Man be Admitted, Instituted, and Inducted to a Church, and after he is deprived, because he was instituted against the Course of the Ecclesiastical Law; This is a void Sentence of Deprivation, because it is now a Lay Free by Induction. *Hill, 15. Ja. B. R.* adjudged between *Hitching and Glover*. Watf. Comp. Inc. Svo. 416. cap. 21. cites S. C.

6. 35 E. 1. Ret. Patentium Membrana. 25. Cum W. B. adeptus fuit Possessionem Thesaurariæ in Ecclesia beati Petri Eborum, upon Collation of the King by Judgment in the King's Court, and he is now disturbed in his Possession by Citations and Appeals. Nos volentes Jura nostra prædicta, & Judicia in Curia nostra Rite reddita in omnibus manutenere vobis mandamus, quod dictum Clericum in Possessione manuteneatis & si qui Provoocationes, Citationes, Appellationes, aut alia Impedimenta interponere presumpserint, per quæ &c. tunc eos arrestare & in Prisona custodire faciatis donec aliud &c.

** Fel. 253.*

7. If a Town erects a Common School, and gives Allowance to a Schoolmaster, the Bishop cannot remove the Schoolmaster, and put in another at his Pleasure; But if he be a Reculant he may remove him by the Statute of 23 El. cap. 1. B. 13. Ja. B. The Bishop of *Carlisle's Case*. Per Curiam.

A Prohibition was granted to the Com. missary of the Arch. dioc. of

Richmond to stay a Suit against a Schoolmaster for teaching School without the Licence of the Bishop. Prohibition was granted, because they endeavoured to turn him out, whereas they can only censure him, because he comes in by the Presentation of the Founder. 1 Vent. 41 Mich. 21 Car. 2. B. R. 1659. *Bate's Case*. — Mod. 3. pl. 11. Mich. 21 Car. 2. Bayle's Case S. P. to the Ecclesiastical Court at Chester, and the Prohibition denied. — There was a Libel in the Spiritual Court against *Wood*, a Schoolmaster and Rector; And a Prohibition was granted as to the Examination of any Matters relating to the Office of Schoolmaster; For when the Bishop hath once granted his Licence, he has executed his Authority (especially in this Case where the School is of the Foundation of Queen Elizabeth, and the Bishop's Chancellor is Visitor) but they may proceed upon the Act to against him for being drunk &c. which is Contra bonos Mores. Comb. 324. Patch. 7. Will. 3. B. R. *Wood v. Hill*.

8. If Administration be granted to A. where it ought not to be granted to him, and after the Administration is repealed and granted to B. because he is next of Kin, B. may sue A. in the Ecclesiastical Court, to account for the Profits of the Chattels of the Testator during his Time, and no Prohibition shall be granted; For B. cannot have Action of Trespass against A. nor has any Remedy for them at the Common Law. *Hill, 15 Ja. B. R.* Adjudged between *Wadsworth and Andrews*. As to Accounts in the Ecclesiastical Courts. See Ecclesiastical Court.

9. King D. 4. confirmed a Church which was incorporated before by the Name of Custos & Collegium in the Diocels of Exeter, and ordained certain Number of Singing-men, in which were some Spiritual and some Lay. The Dean and Chapter, with the Bishop, abridg'd the Number to 24 in all, and after to 16, 4 Spiritual and 12 Lay, and now they will add 2 more to the Number of Spiritual Men, by which their Livings shall be less, yet no Prohibition shall be granted, because it appears that the Number was greater, and after made less. D. 8 Ja. B. per Curiam, between *Withers and Owen*.

10. If a Man sues in the Spiritual Court for Perjury, where the Principal, upon which, or for which the Oath was made, does not touch, nor is Spiritual Matter, of which the Spiritual Court ought to have Jurisdiction, Prohibition lies. 2 D. 4. 10.

Br. Just. Dec. tim. pl. 20. cites 2 H. 4. 9. — Perjury be committed in the Spiritual

spiritual Court in a Cause of Matrimony, Tithes, Testament, or Legacy, or of any other Thing of which the Conscience belongs to their Jurisdiction, that Court shall have Jurisdiction in such Case of Perjury, and no Prohibition lies; But it is otherwise where the Perjury concerns a Temporal Matter. By all the Judges of both Benches. *Jenk. 184. Case 6*

Note, by if a Man buys a Horse of me, and swears upon the Evangelist to pay me 1000 L. for him at such a Day, and he does not pay, I shall have Debt at Common Law, and Citation Perjuræ Petiti at the

the Spiritual Law, for these are diverse Things, and it does not offend the Common Law. Br. Jurisdiction, pl. 2 cites 34 H. 6. 70.—But see 22 E. 4. 18. and 2 H. 4. 10. Contra there; because it arises upon Lay Matter. But Quære if it be taken there, that he shall not have Suit in Court Spiritual to make him hold his Bargain, or to punish the Perjury. Br. Ibid.—See (D) pl. 4.

Br. Jurisdiction, pl. 20. cites 2 H. 4. 9. and pl. 27. cites 11 H. 4. 85.—Br. Prohibition, pl. 2. cites 2 H. 4. 10. accordingly, but 34 H. 6. 70. contra.—Br. Prohibition, pl. 4. cites 2 H. 4. 9.—Pl. 8. cites 35 H. 6. 29.—Pl. 18. cites 11 H. 4. 88.—Pl. 9. cites 12 H. 7. 24.

12. Contra 22 Aff. 70. But the Ordinary cannot injoin him to pay the Debt, but to [do] Penance.

13. H. 2. ordained, that it should not be lawful for a Bishop to punish any Man for Perjury or Breach of Faith. Speed 458. b.

14. If a Man promise another to pay Debts, or to make a Peoffment, and does not perform it, the Ordinary may Ex Officio cite him for Breach of his Faith, and award him to Penance.

15. 15 E. 3. cap. 6. It is accorded, that the Ministers of Holy Church for Money taken for Redemption of corporal Penance, nor for Proof or Account of Testaments, or for Travail taken for the same, nor for Solemnity of Marriage, nor for other Things touching the Jurisdiction of Holy Church, shall not be impeached, arrested, nor driven to answer before the King's Justices &c. But this was after repealed in the same Year. 18 E. 3. cap. 6.

S. P. 13 Rep 40. Trin 7 Jac. in the Case of Modus Decimandi—16. A Prescription cannot be tried in the Ecclesiastical Court, because it ought to be tried by Jury which cannot be there. In Time of E. 1. Affise against a Parson, and made his Plaint of a Horse; the Parson said, that he is Parson of P. and that it has been Parcel of his Church Time out of Mind &c. and there has been Sepulture of dead Bones; Judgment, if the Court will take Cognizance; and after the Defendant, pleaded to the Affise; Quære; For per Persey, the Court ought not to take Cognizance. Br. Jurisdiction, pl. 71. cites 44 Aff. 8.

Whether the Proprietors of a Messuage, called the Priory, have Time out of Mind repaired the Chancel, may be tried and determined in the Spiritual Court as well as a Modus Decimandi; and though the Parson is of Common Right to repair the Chancel, yet it may be on a particular Man's Estate by Prescription. 2 Vent. 239. Mich. 2 W. & M. C. B. Williams v. Bond.

Libel set forth a Prescription for the Vicar of the Parish of M. to find a Parson to officiate in the Chapel of G. being an ancient Chapel within the said Parish for the Ease of the Parishioners, in Consideration whereof the Parishioners Time &c. paid him and Predecessors two Quarters of Wheat, and two of Malt yearly; Upon Suggestion of No such Prescription, Prohibition was moved for. And it was agreed by all, that the Things being by Prescription, which properly is triable at Common Law, did not alienate Jurisdiction to the Spiritual Court of Jurisdiction; As if a Person be by Prescription, though one may bring Annuity for it at Common Law, yet they may libel for it in the Spiritual Court upon the Prescription, and cited F. N. B. 51. Holt Ch. J. said it is the very Point adjudged in Williams's Case, 5 Co. 72. for it is an Ecclesiastical Duty, to be performed for the Advantage of the Parishioners; and though it commences by Prescription, yet it concerns Ecclesiastical Persons, and is a mere Spiritual Thing; and is not at all the same as if it were against a Layman, who is not so easily bound by Canon Law as Ecclesiastical Persons are; for their Proceedings there by Prescription shall not charge a Layman, or any Temporal Right. 12 Mod. 404, 405. Trin. 12 W. 3. B. R. Stone v. Jones.

Though Prescription, as whether a whole Parish or a select Vestry should chuse Churchwardens, is a Matter triable at Common Law, yet Sentence is to be given in the Spiritual Court according to their Verdict. Agreed on a Motion for a Prohibition. 10 Mod. 12. Mich. 9. Ann. B. R. Banister v. Hopton.

See (M) pl. 9.—See Diemes (B. 3) —S. P. 2 *Harden, [per] Curiam. Hobart's Reports, Case 314. between Scot and Wall.

Vent 239. in Case of Williams v. Bond.—He may sue in the Spiritual Court Pro Modis Decimandi; but if he sues for Tithes in Kind, (which by a Modus Decimandi are utterly extinct, and the Land discharged

discharg'd of them) then upon a Plea *De Modo Decimandi* a Prohibition lies. 13 Rep. 44. Trin. 7 Jac. in the Case of *Modus Decimandi*.

It was resolv'd, that the Parson might sue for *Modus Decimandi* in the Spiritual Court, and cited 2 R. 3. 3. a. *But if the Parishioner denies it*, that they ought to surcease, and a Prohibition lies; and it shall be tried at the Common Law. Noy. 81. Steward's Case.

18. So if the Parson prescribes to have Tithes of Things not tithable, as of Rents of Houses, he may sue for it in the Spiritual Court, and no Prohibition lies, yet no Tithes *de Jure* ought to be paid of them. Co. 11. Doctor *Grant* 16.

might be, that this *Modus Decimandi* had been paid Time out of Mind for all the Tithes of the Land, whereupon the Houses are built; And though this Land was afterwards built upon, this shall not take away the Right of the Parson in this Case, and since it might have a lawful Commencement, and that it had been Time out of Mind, it was for this Reason resolv'd, that Consultation should be granted; And that he might sue for this Money in Court Christian, because it is in the Nature of Tithes, viz. a *Modus Decimandi*; And every ancient City and Borough has for the most part such Custom of a *Modus Decimandi* for their Houses, for the Maintenance of their Parson. And a Consultation was granted. 11 Rep. 16. a. b. S. C.

19. So he may sue in the Spiritual Court for Tithes of Great Trees which he claims by Prescription, and no Prohibition lies, yet *de Jure* they are not tithable. Quære. 9 D. 6. * 46.

S. P. being there at pl. 42. in the Year-Book.

20. So he may sue there for a *Modus* of the Tithes of Fish taken in Island, and brought into the Town where &c. (yet no Tithes *de Jure* are due thereof as it seems.) My Reports, 14 Ja. Goslin and Warden.

was upon a Custom in Yarmouth; But because the Spiritual Court had rejected the Proof of another *Modus* differing from that which the Plaintiff had alleg'd, a Prohibition was granted; and at another Day a Prohibition was granted by Mountague Ch. J. [who was made Ch. J. after the former Prohibition granted] and all the Court, because he mistook his *Modus*.

21. If there be a Custom, that after the Grass is cut and set in Grass Cocks, the 10th Cock shall be assigned to the Parson, and that he by the Custom shall have lawful Authority to make it into Hay upon the Land, if the Owner of the Land disturbs him to do it, he may sue for this in the Spiritual Court, and no Prohibition shall be granted; For it is incident to the Custom to come there to make it into Hay. Rich. 14 Ja. B. Reynolds and Newbury.

ought to be tried by the Common Law, yet the Court would not grant a Prohibition; But [the Book says,] it seems that they did not intend this, for they did not speak of it; But Warburton seemed [of Opinion] that it was an unreasonable Custom. Roll. Rep. 420. S. C.

22. The proper Place to sue for a Legacy, is in the Ecclesiastical Court; because it is not any Debt, but only due by the Will.

H. 6. 9 per Ashton. — J. S. libels in the Consistory-Court of the Bishop of Exeter against C. and D. Sitters to B. and Executors of his last Will, for a Legacy left &c. they pleaded *No Assets*, and made a special Allegation, that A. their Father was possessed of several long Leases in several Tenements, and devised them to B. his Son; but if he should die unmarried, or if he should marry and die without Issue, then C. and D. his two Daughters, to have these Leases &c. and that B. dying without Issue, they claim as Devisees of A. their Father, and not as Executors of B. their Brother; and the Court there over-ruled this Plea of theirs; and a Prohibition was granted, because it is Matter of Title with which they ought not to meddle. 2 Show. 51. pl. 35 Pasch. 31 Car. 2 B. R. Bassard v. Stockwell.

23. If A. gives B. 5 Marks, and he devises by Will, that whereas he owes B. five Marks, his Executor shall make it 10 l. the Suit for this 10 l. may be in the Ecclesiastical Court; For this is not any Addition to the 5 Marks, but a New Sum given in Satisfaction of the 5 Marks, and is no Part of the 10 l. nor any Debt but only a Legacy.

For this might have a lawful Commencement, because it

See Dimes (L) — * It seems that this should be 56. the

See (U) pl. 19 — S. C. 3 Buls. 241. — S. C. Roll Rep. 119. and it

And though the Custom was denied, and it was said, that hereby the Customs would be altered, and that they

Br. Jurisdiction, pl. 52. cites 3-

W. on his Marriage with M. co-venanted with J. S. to pay A. B. and C. (who were

his Wife's Children and every of them gacy. M. 22. Ja. B. R. between *Charly and Wood*. Prohibition denied.

10 l. at their respective of Ages of 21 Years, and gave Bond for his Performance of this Covenant. Afterwards he devised to the same A. B. and C. 10 l. a-piece to be paid them at their several Ages of 21 Years, in Performance of his Bond and Covenant in that Behalf, made at his Marriage, and not otherwise, and died. A. and B. sued in the Spiritual Court for their Legacies. The Court at first inclined to grant a Consultation, because they were all Strangers to the Covenant, but it being moved in another Term, the Court doubted, because it was not given as a Legacy, but in Performance of the Covenant, and not otherwise; And Anderson and Rhodes said precisely, That a Consultation should not be granted, but the others hesitated, and at last they compounded the Matter. Goldsb. 58. pl. 15. Trin. 29. Eliz. Peirce v. Davy—2 Le. 119. pl. 164. Mich. 29 & 30. Eliz. S. C. by Name of *Davis v. Percie*, says, That afterwards the Justices looked and advised upon the Indenture, and finding that the Deed and Obligation were made to the Friends of the Mother, and not to the Daughters themselves, to whom the Legacies were bequeathed, were of Opinion that a Prohibition did not lie.

If the Testator charges his Executors to pay his Debts to his Creditors, the Creditors may sue them in the Spiritual Court on Non-payment, and a Prohibition shall not be granted; because this Charge of the Testator is as a Devise to his Creditors. F. N. B. 44 (B) cites H. 9 E. 3. Prohibition 17.—S. C. cited 2 Le. 120. pl. 164. by the Justices; but Anderson Ch. J. utterly denied it in the Case of *Davis v. Percie*.

24. D. 2. ordained, That the Laity, or the King, or other, should hold Plea of Churches and Tithes. Speed 45. b.

One devised a Rent out of a Term for Years whereof he was possessed to a for Life, and a Libel was for this Legacy, it was suggested for a Prohibition that this was a Legacy out of Land. After 2 Motions, the Court held, That no Prohibition should be granted; Because the Rent issues out of a Term, which was a Chattle, and is testamentary by the Common Law, and consequently the Rent is so too; and no Prohibition was granted. Sid. 29. Pasch. 18 Car. 2. B. R. *Pansley v. Rofs*.—1 ev. 180. S. C. by Name of *Rosse v. Rosse*, and Windham said, That if the Term itself had been devised, it would have been suable for there, and therefore the Rent out of it is likewise, but Keeling and 1 withden doubting, they did not then grant the Prohibition, but order'd Proceedings to stay till the other Side be heard.—2 Keb. 5. pl. 2. S. C. by the Name of *Rumney v. Rosse*, & Ibid. pag. 8. pl. 22. S. C. the Court denied the Prohibition it being a mere Testamentary Legacy, and no more than a Devise of so much Money out of Goods, which is but a Direction, How it shall be paid, and the Rent is but a Chattle, and goes to the Executors.

25. If a Man devises a Rent out of his Stock and House, which he has for Years, he may sue for this Rent in the Ecclesiastical Court, because it issues out of a Chattle, and he has not Remedy for it at Common Law. D. 7. Ja. B. *Mary James's Case*, per Curiam, and Prohibition denied.

S. P. because not within their Consultance. 2 Show 50. pl. 36. *Bastard v. Stockwell*.—26. If a Man devises a Legacy to another out of certain Land, whereof he is seised in Fee, and the Devisee sues for this in the Spiritual Court, a Prohibition lies; For this issues out of the Land, and the Executor shall not have any Estate in the Land, till the Legacy raised out of the Profits (as was objected of the other Part) D. 15. Ja. B. R. *Singleton and Wade*. Per Curiam. D. 7. Ja. B.

But where A. seised in Fee, and possessed of a Lease for Years of Lands in D. for divers Years yet to come, devised all his Lands and Leases to T. his Son and Heir (whom he made Executor) excepting 20 l. per Annum for 7 Years, to be employed in this Manner, viz. 100 l. to his Daughter E. to be paid within 5 Years, and 30 l. to his Daughter E. within 7 Years, and in Anno 1600 died; and T. entered, and took the Profits as well of the one as the other for the 7 Years, and died, and made M. his Feme (now Wife to the Defendant) his Executrix, and left Assets unto her, whereupon the said E. the younger Daughter sued her for that Legacy of 30 l. and now they brought a Prohibition, surmising, that this Legacy being out of the Profits of Land, no Suit could be in the Ecclesiastical Court for it. But in regard it was a meer personal Legacy, altho' it is to be raised out of the Profits of Land, yet being raised out of the Lease for Years as well as out of the Land, and he having raised it, and being dead without Payment, there being no Action maintainable for it at the Common Law by Account against his Executors, or otherwise, it is therefore Reason she should have her Remedy in the Spiritual Court; whereupon a Consultation was awarded by all the Justices besides Williams, who doubted thereof. Cro. J. 29. pl. 9. Pasch. 9. Jac. B. R.

If a Legacy be granted out of Land, this shall not be sued for in the Spiritual Court; But if one by Will devises Lands to be sold for Payment of Debts and Legacies, this shall be sued for in the Spiritual Court. Per tot. Cur. Brownl. 32. Anon.

27. If a Man devises a certain Legacy to another, and that if his Executor has not sufficient to pay it, then he devises it out of a certain House, of which he is seised in Fee, the which descends unto the Executor, if the Executor has not Assets of Personal Goods, he cannot be

be sued for this in the Spiritual Court, as payable out of the House; Because it has no Jurisdiction thereof. Pasch. 15. Ja. B. R. Relolved. Per Curiam, between *Singleton and Wade*.

28. If a Man seized of Land in Fee makes B. his Executor, and by his Will in Writing devotes that B. and 3 others shall sell the Land, and that the Monies shall be distributed into 4 Parts, whereof one Part shall be to F. &c. and dies, and after B. will not sell the Land, and F. sues him in the Court Christian, a Prohibition lies; Because if it be a Legacy, yet it issues out of Land, and the Monies shall not be Assets in the Hands of the Executor. Tr. 17. Ja. B. between *Graves and Edwards*, per Curiam, and * Consultation denied. *Hobart's Reports Case 343. same Case.*

See Assets. —
Hob. 205.
pl. 345. *Edwards v. Graves*,
S. C. accordingly, and that it was
* Fol. 285.

appointed to special Uses in Way of a Court of Equity, neither can they hold Plea of a Legacy in Equity, but where it is a Legacy in Law in Deed; For they must hold Plea by their Law as our Courts of Law do.

30. If a Man sues in the Ecclesiastical Court to prove a Nuncupative Will of Land to revoke a Will in writing thereof, a Prohibition shall be granted. Id. 14. Ja. B. R. *Reynold's Case*. Prohibition granted.

Show. 11.
S. C. cited
Arg. and
says, Tho' the Subjectum certa,

quod be spiritual, yet if the Consequence be a Determination of a Thing belonging to Common Law Cognisance, a Prohibition will go. — N. B. there is no pl. 29. in Roll.

31. If a Man, possessed of a Lease for Years devotes that his Executor out of the Profits of it shall pay to every one of his Daughters 20 l. at their full Age, the Executor may be sued in the Spiritual Court to put in Surety to pay the Legacies, and Prohibition shall be granted, For this is to issue out of a Chattle. Hill. 11. Ja. B. Per Curiam. *Proove's Case*.

A Man having a Legacy devised unto him out for a Lease for Years, which Indenture of Lease was

in the Hands of a Stranger; The Legatee sued the Executors in the Spiritual Court to assent to the Legacy; And a Prohibition was prayed, because they order that the Lease should be brought into Court, which they ought not to have done, being in the Hands of a Stranger; But the Prohibition was denied by the whole Court; For they may make an Executor assent to a Legacy out of a Lease, and therefore may order, that tho' the Lease be in the Hand of a 3d Person, that it shall be brought in to execute it; For the Order, although it be general, binds only the Defendant. Mar. 26, 27. pl. 167. Trin. 17. Car. in C. B. Anon.

32. If a Man devises, that his Executor shall sell certain Land after his Death, and with the Monies, for which it is sold, that he shall pay certain Legacies; If he sells the Land after the Death of the Testator, and the Legatees sue him in the Spiritual Court for those Legacies, a Prohibition lies; Because those Legacies issue out of Land, which is not within their Jurisdiction, but their Remedy lies in Chancery. Id. 4 & 5. Ba. 151. 5. by the Justices of both Benches. Contra D. 9. El. 264. 41. Opinion. B. 14. Car. B. R. between *Lawyer and Whistler*, a Prohibition granted per Curiam. *Hobart's Reports, Case 343. between Edwards and Graves.*

A. devised that J. S. should sell his Land, and that his Daughter should have one Part of the Money for her Advancement, and gave other Parts

to others in certain Sums, and died; The Executors sold, but refused Payment of the Legacies; The Daughter libelled in the Court Christian. It was the Opinion of all the Justices of both Benches, that a Prohibition well lies in this Case, in as much as this is not a Legacy Testamentary, but out of Land, by reason of the Will, the Performance whereof the Court Christian has nothing to do to intermeddle with; but the Party may have Action of Account at the Common Law. D. 151. b. pl. 5. Mich. 4 & 5. P & M. Anon. — S. C. by the Name of *Paschal v. Ketrich* accordingly, Berdl. 60. 11. 104. And there is a Nota, That if Testator in such Case devotes his Lands to his Executors for a Term to levy a certain Sum out of the same to pay it to the Devisee, yet if after Sale the Devisee sues in Court Christian for the Legacy, a Prohibition shall be granted. — D. 151. b. Marg. pl. 5. says that in Mich. 50. & 51. Eliz. B. R. it was so adjudged in *Lord Rich's Case*.

33. In the Statute of 21 H. 8. cap. 5. of Probate of Testaments, there is a Proviso, That if the Testator devotes by his Will, any Land, Tenement, or Hereditament to be sold, that the Monies thereof coming, nor the Profits of the same Land for any Time to be taken, shall not be taken

as any of the Goods or Chattels of the Testator. (By the Coherence it seems it is intended to be put in the Inventory.)

'Tho' it is generally true, That all the personal Estate

34. *15 Car. between Roper and Mattingley* Prohibition granted, per Curiam, where the Suit was to put the Money for which the Land was sold into an Inventory, and this at the Suit of the Legatees.

of the Deceased, of what Nature or Quality soever it be, ought to be put into the Inventory, and appraised, yet the Goods, to which the Husband is intitled as Administrator to his Wife, are not, nor Goods given away in the Life-time of the Deceased, and actually in the Possession of the Person to whom they were given; As for Instance, an Administratrix exhibited an Inventory to the Ordinary, in which she put some Goods, which the Intestate had given to a younger Child, and which were then in her Possession; For her younger Child and she being sued in the Spiritual Court for those Goods, she pleaded this *Decree of Gift*, and the Plea being rejected by that Court, she moved for a Prohibition, and had it. 2 Bull. 315 Hill. 12 Jac. James v. James.

Hob. 265.
pl. 345. S. C.
— See pl. 28.

35. If the Ecclesiastical Court holds Plea of a Legacy in Equity, a Prohibition lies; For they ought to hold Plea by their Law, as other Courts of Law do. *Hobart's Reports* Case 343.

36. If the Archdeacon grants to one the Office of Register of the Archdeaconry by his Patent for Life in Reversion, and after the Grantee is a Reculant Convict, by which the Archdeacon, supposing him to have forfeited the Office, by another Patent, grants it to another for his Life, and he libels in the Spiritual Court against the first Grantee, to deprive him of the Office for the Reculancy, and because it was granted in Reversion, and that he may have the Office according to his Patent, a Prohibition shall be granted; Because here the Office which is a Matter of Franktenement, comes in Debate, and which of the 2 Patents shall be preferred, which does not belong to their Jurisdiction. *Rich. 15 Ja. B. R. Kifte and Bridgeman. Resolved, and Prohibition granted.*

* Fol. 286.
S. C. cited
4 Mod. 28
Hill. 3 W.
& M. B. R.
in the Case
of Jones v.
Beau.

37. If there be a Question between 2 upon several Grants, which of them shall be Register of the Court of the Bishop, this shall not be tried in the Bishop's Court, but at the Common Law; For tho' the Subjectum circa quod be Spiritual, yet the Office itself is temporal. *Hill. 8. Ja. B. said by Coke to be Skinner and Minge's Case.*

38. If the Bishop grants the Office of Chancellor to A. and B. and after A. releases to B. and then B. dies, and after the Bishop gives it to R. against whom A. sues in the Ecclesiastical Court, supposing his Release to be void, a Prohibition shall be granted; because the Office is Temporal, tho' he exercises the Office in Spiritual Matters. *B. 8. Ja. Robottam's Case resolved, and Prohibition granted, per Curiam.*

Palm. 450.
S. C. by
Name of
Glanvil's
Case.
Godb. 390.
by Name of
Sutton v.

39. But if a Chancellor be sued in Court Christian to be deprived for Insufficiency, as not having Consuance of the Canon Law, no Prohibition lies; because they are the proper Judges of his Ability, and not the Judges of the Common Law. *19. 3 Car. B. R. Case, Chancellor of Gloucester. Resolved per Curiam, and Prohibition denied.*

Chancellor of Gloucester's Case. — Noy 91. Dr. Sutton's Case. S. C. — Latch. 228. S. C. — Cro. C. 65. S. C. — S. C. Cited Arg. 4 Mod. 28. And says that it was the Opinion of Justice Croke, who reported that Case, [but it seems there to be the Opinion of the Court] that the Doctor might have an Assize to try it, if he had any Wrong done him, which shews he had a Freehold; and if so, then admitting the Spiritual Court can try the Sufficiency of a Chancellor, yet if the Temporal Courts have also in the same Case a Jurisdiction in Respect of the Freehold, the Authority of the Ecclesiastical Court shall be ousted — S. C. Cited Comb. 306. in Case of Jones v. the Bishop of St. Asaph; but the Court there denied that Case to be Law. And Eyres sen. J. said the High Commission Court at that Time bore all before it, no one durst speak against it but my Lord Coke, and it bore him down at last.

40. If a Vicar sues the Parson appropriate of the same Parish to shew Cause why a Terrar, made concerning the Land and Tithes appertaining to the Vicar, shall not be allowed after a Trial at Common Law against the Vicar for the same Thing, a Prohibition lies, because they cannot determine Matter of Franktenement there. *19. 11 Car. B. R.*

B. R. between Pearse Plaintiff, and Sir G. Winter and Chester his Former Defendants, of the Parish of St. Philips in Gloucester, where the Vicar would have Tithes of Grain, and such like, arising from Land, whereof he had before Tithes of Hay and Pasture before it was ploughed.

41. If a Man sets out his Tithes by Severance from the 9 Parts of the 10, and after carries away the 10th Part, the Parson cannot sue for this in Court Christian, because by the Severance from the 9 Parts, it was become a Chattel, for which he might have Action of Trespas. Dubitatur. D. 40 El. B. R. between *Leigh and Wood.

James d for a Prohibition, That he set forth the Tithes, and afterwards for some reasonable Causes (not saying what) he detained Part of them, and that the Parson had su'd him for them in Court Christian, and thereupon it was demurr'd; And Fenner and Clerch held it to be good Cause for a Prohibition, they being, by the setting out, become Lay Chattels, for which he may have Trespas or Detinue at Law; but Gawdy and Popham contra, Because this Suit is against the Party himself that set them forth, tho' the Parson, if he would, might take his Remedy against him at Common Law; and that this is prov'd by the Words of the Statute of 32 H. 8. That if any do not set out, or do detain or withhold his Tithes (which is to be intended after they are set out) he shall be sued in the Court Christian &c. For otherwise Mischief would ensue to the Parson, because he would secretly set his Titles forth, so as the Parson should not know thereof, and then afterwards would carry them away Et adjournatur.—S. C. Mo. 912. pl. 1287. reports, that it was agreed that if the Owner himself does not set forth the Tithes, or carries them away after they are set forth, there the Suit shall be in the Spiritual Court for them. But if the Owner sets them forth, and a Stranger carries them away, no Suit shall be for them in the Spiritual Court.—S. P. 12 Rep. 23. Trin. 44 Eliz. Sprat v. Heal ——— But where after Severance a Stranger carried them away, and the Parson libell'd against the Owner of the Land for the Tithes, who pray'd a Prohibition; it was adjudg'd that no Prohibition should go, because he might plead the same Matter in Bar in the Spiritual Court. 4 Le. 7. pl. 30. Hill. 26 Eliz. B. R. Gerrard's Case.

A Parishioner severed the Tithes from the 9 Parts, but being in a Close the Gate was locked, so as the Person could not come at them, and he sued in the Spiritual Court; and there the Question was whether the Gate were locked or open. And thereupon a Prohibition was brought, supposing this to have been a Temporal Matter; for the Tithes being severed are Lay Chattels. But the Court said, That altho' the Tithes be severed, yet by the Statute they remain suable for in the Spiritual Court, and then the other is but a consequent thereof, and therefore is triable there; And if they refuse to allow his Proofs, as it was surmised, (but not within the Prohibition) it was said that he ought to appeal. Cro. E. 847. 344. pl. 26. 43 Eliz. in C. B. Blackwell's Case.

42. If the Churchwardens of a Parish have us'd Time out of Mind to elect the Clerk of the Parish, and a Suits in the Ecclesiastical Court to remove him, and put in one of the Election of the Parson, a Prohibition lies. Mich. 22 Ja. B. R. between Walpoole and Coldwell, for the Clerk of St. Thomas Apostles in London, Prohibition granted by Consent of the Parties to try the Custom. Intratur. Hill. 22 Ja. Ja. Rot. 466. and like Prohibition granted between Browne and Cratcliffe, for Whitechapel Parish. D. 19 Ja. B. R. Rot. 177. And like Prohibition granted between Beaumont and Westley, for the Parish of St. Euthbert's in Wells in the County of Somers. D. 11 Car. 3.

Parishioners prayed a Prohibition, upon Surmise of a Custom that the Parishioners at their Veltry ought to choose him; and after diverse Motions a Prohibition was granted; for they held that it was a good Custom, and that the Canon cannot take it away. Cro. J. 67. pl. 9. Trin. 21 Jac. Jermyn's Case ——— In such a Case, Mich. 16 Car. B. R. The Court said they would advise, and appointed that Precedents should be search'd what had been done in such Cases. And the Case of Trin. 21 Jac. was cited, but nothing more is said of the Matter. Cro. C. 589. Orme v. Pemberton. ——— By Custom he is eligible by the Parishioners notwithstanding the Canon, and then the Election is determinable at Common Law only. Per Hale Ch. B. Hard. 379. Mich. 16 Car. 2. in Case of Dawson v. Fowle.

43. If a Clerk of a Parish claims by a Custom to have a certain Quantity of Bread at Christmas of every Inhabitant of the Parish, and sues for it in the Spiritual Court, a Prohibition lies; for it is not like to a * Penhon due to a Parson; for a Register of the Spiritual Court may have an Assise of his Office. Mich. 8 Car. B. R. between Marpo and Brooke, per Curiam resolved, and Prohibition granted

Suitors
Charitative.

Arg. 2 Roll

Rep. 71. Hill. 16 Jac. in Bishop's Case; cites the Register, fol. 52. for he is Quodam modo an Officer Spiritual; and cites 21 E. 4. 47.

* See Pension.—*Pensions* shall be demanded in the Spiritual Court. Per Prohibition, 11. 21. cites the Register, fol. 47.—Pension issuing out of an Appropriation, *tho' by Prescription*, is liable in the Ecclesiastical Courts; for it could not begin but by the Grant and Institution of Spiritual Persons. And therefore if the Duty be travers'd, it may be tried there. Per Holt Ch. J. Salk. 58. P. Ch. 12 W. 3. B. R. Smith v Wallis—11 S. P. 1 Salk. 333. Mich. 13 W. 3. B. R. in Case of Ballard v Gerard

44. If a Suit be in the Spiritual Court against a Feme for Exercising the Trade of a Midwife without Licence of the Ordinary against the Canons, a Prohibition lies; for this is not any Spiritual Function of which they have Consuance. Tr. 9 Car. B. R. between Benskin and Cripps resolved, and Prohibition granted to the Court of Audience.

S C Hob.
246. pl.
313. Mich.
16 Jac.—
H. 1. 132.
S. C. and
P. but is
Hill. 4 Car.
C. B. and seems to be taken from Hobart.

45. If a Presentment be made by the Churchwardens of a Parish in the Ecclesiastical Court, that I. S. a Parishioner is a Railer and a Sower of Discord among the Neighbours, a Prohibition lies; for this belongs to the Leet and not to this Court, unless that it was in the Church, or such like. Hobart's Reports, Case 311. between Smith and Lammel, Prohibition granted.

S C Hob.
248. pl. 321.
Mich. 16
Jac.—Het.
133. S. C.
Hill. 4 Car.
C. B. but seems to be taken from Hobart.

46. If the Parishioners of a Parish libel in the Ecclesiastical Court to make Proof of diverse Manners of Tything in Perpetuum rei Memoriam, a Prohibition lies; for this [is] conceived to be a strange Attempt. Hobart's Reports, Case 319. between Napper and Steward.

* Fol 287

Cognizance
of Ways for
carrying

Tithes be-
long to Court Christian, as appears by 2 Ed. 6. and F. N. B. in Consultation 51. A. and Linwood in his Treatise of Tithes. Jo. 230. Halfey v. Halfey.

47. If a Suit be in the Spiritual Court Ex Officio, or otherwise, for * a Way to the Church for the Parishioners, a Prohibition lies upon a Surmise that it is a common Highway; for it shall be tried at Common Law whether it be a Highway or not. Tr. 15 Car. B. R. between Smith and Bennet. Per Curiam, Prohibition granted.

S. P. And a
Prohibition
was granted.
2 Koll.
Rep. 41.
Trin. 16 Jac.
B. R. Hill.
v. Bedoe.

48. If the Churchwardens of a Church sue for a Way to the Church, which they claim to appertain to all the Parishioners by Prescription, a Prohibition shall be granted; for it is temporal. 13. 16 Ja. B. R. between the Churchwardens of *Bitham and Broom*, Prohibition granted accordingly.

S. P. and
S. C. Re'l.
Rep. 239. pl.
20. And
there Coke
Ch. J. took
Notice of
the Custom
for the
Preacher at
Parish to
dine with
the Lord
Mayor, and
ask'd whe-
ther he
was liable

49. If the Churchwardens of a Church sue J. S. in the Ecclesiastical Court, because he and all those who have been seized of such an House &c. at the Perambulation of the Parishioners of the Parish &c. have us'd to find a Refreshing for them, scilicet, Bread and Ale, and to suffer them to rest themselves there; a Prohibition shall be granted, because they claim it in Nature of a Corody, and if this shall be suffered, great Inconvenience may ensue. 13. 14 Ja. B. R. The Wardens of the Church of *Uffington's* Case in the County of Berks resolved, and Prohibition granted. Hill. 15 Car. B. R. Like Prohibition prayed for the same Parish in one *Lock's*, and the Churchwardens of the same Church upon a Suit by them in the Spiritual Court, but it [was] not granted, but refer'd to Justice Jones when he comes in his Circuit.

to be tried in the Spiritual Court—See (E) pl. 14.

50. If the Parishioners of a Parish have used Time whereof Memory is, to elect one Churchwarden, and the Vicar another, and after a Canon is made that the Vicar shall elect both, and he does accordingly, and the Parishioners elect one according to the Custom, and the Vicar disallows him and establishes the two elected by the Vicar, a Prohibition shall be granted. *Pl. 1 Ja. B. R. The Parishioners of Rosenden in Kent adjudged.*

S. P. For observance of the Canon might have all the Authority of his Church and Parish. Per Habbard. Noy.

51. But's Case. The Canons ought to be according to the Law and Custom of the Realm, and they cannot make Churchwardens that were *Eligible* to be *Donative*, without an Act of Parliament; and the Canon is to be intended where the Parson had the Nomination of a Churchwarden before the making of the Canon. Per Coke Ch. J. Noy 139. Anon.—S. C. Cited Vent. 267. Hill. 26 & 27 Car. 2. B. R. in an Anonymous Case, where the Court said that Custom would prevail against the Canon.

51. Tr. 7 Car. B. R. between *Skirley and Brown*. Rot. 1391. A Prohibition granted against the Churchwardens chosen by the Parson of St. Magnus near London Bridge, by Force of the Canon, upon a Surmise that the Parish has a Custom to elect both Churchwardens. *Pl. 4 Car. B. R. Rot. 420. Draper and Stone for Abchurch in London, Prohibition granted.*

S. C. cited, and a Mandamus granted to the Churchwarden chosen by the Parishioners, Raym. 439.

because the Ecclesiastical Court cannot try the Custom of chusing, as is here alleg'd. 440. Pasch. 33 Car. 2. B. R. Carpenter's Case. — See Mandamus (H. 5)

52. If the Wardens of a Church sue in Court Christian, J. S. supposing by their Libel that he and all whole Chate he has in certain Land next adjoining to the Church yard have used Time whereof Memory, to repair so much of the Fences of the Church-yard as was next adjoining to the said Land, a Prohibition lies, for this ought to be tried at the Common Law, inasmuch as it is to charge a Temporal Inheritance. Mich. 14 Car. B. R. The Churchwardens of Claydon and Duncomb.

The Ecclesiastical Court can have no Consuance with the Common Law, but that being tried and found as said

the Plaintiff in the Prohibition, a Consultation will go. Carth. 33 cites the Case of Vanare v. Spleen

53. If a Suit be in the Spiritual Court by the Official Ex promotione of one Administrator against another Pro salute anime for a temerarious Administration by Defendant of the Goods of the Intestate, and to hinder him to make an Inventory, and to shew in an Inventory annex'd the particular Goods; Prohibition lies, because otherwise they shall * try the Property of the Goods there, where he may have Trover and Conversion, or Detinue at the Common Law for them. Mich. 16 Car. B. R. between *Sey and Harcourt*, Per Curiam. Prohibition granted to the Consistory of Winton in 2 Suits.

* They may, in such Case of *Exemption* deriving the Property in the Plaintiff, and *challenging* the Property there.

Per Habbard Ch. J. Kelw. 117. b. pl. 34.

54. For Marriage Money, the Suit lies in the Spiritual Court, and therefore Prohibition does not lie thereof. Br. Prohibition, pl. 21. cites the Register, fol. 46.

Et Mon gives Goods in Marriage with his Daughter,

and afterwards they are divorced, the Wife may sue in the Spiritual Court for the Goods, and no Prohibition will lie thereof. F. N. B. 44. (C)

55. Where the Spiritual Court ought to have Jurisdiction, Prohibition does not lie. Contra, where the Temporal Court ought to have Jurisdiction. Br. Prohibition, pl. 23. cites 22 Aff. 77.

56. If a Man sues in the Spiritual Court, for Rent reserved upon a Lease of Tithes, or Offerings, Prohibition lies; for this is a Lay Rent. Br. Prohibition, pl. 3. cites 44 E. 3. 32.

57. On a Writ which arises upon their Judgment in their Spiritual Court, the Suit for it shall be in the Spiritual Court. Per Hill, Br. Jurisdiction, pl. 26. cites 11 H. 4. 85.

53. If a Man *strikes* a Chaplain, or a Man *intra sacros Ordines*, and he sues him in the Spiritual Court, Prohibition lies; For they use there to excommunicate him for this Offence, and will not assail him of it till he has made a Satisfaction to the Party grieved. Br. Prohibition, pl. 18. cites 11 H. 4. 88.

59. An Action upon the *Case* is maintainable for *not doing divine Service*, though it be a spiritual Matter. Br. Jurisdiction, pl. 43. cites 22 H. 6. 52.

60. In *Trespass in B. R. against a Parson for taking Goods, claiming them to be Tithes by Cause of Silva Cædua*, and the Parson sued him in the Spiritual Court for the same Matter, and upon this the Court granted a Prohibition. Br. Prohibition, pl. 6. cites 38 H. 6. 14.

Br. Spolia-
tion, pl. 4.
cites S. C.

61. A Prohibition shall go *where the Right of Advowson comes in Debate* in Suit of Spoliation in the Spiritual Court. Br. Prohibition, pl. 7. cites 38 H. 6. 19.

62. *Spoliation*, and Debate upon *Appropriation* shall be determined in the Spiritual Court. Br. Jurisdiction, pl. 110. cites 38 H. 6. 20.

63. A Prohibition lieth for *Chauntries, Chapels, Prebends, and Vicarages &c.* F. N. B. 40. (G)

64. If one be sued in the Spiritual Court for the *Collation to a Grammar School* a Prohibition lies. F. N. B. 40. (L)

65. The Chancellor of N. made an *Order*, and published it there, *that every Woman coming to be church'd after Child-bearing, according to the Law of the Church of Eng. should come covered with a white Veil, and that Eliz. Shipden, being admonished of it, refused to conform, for which Contempt she was excommunicated, and a Certificate thereof into Chancery, whereupon a Capias was to be awarded against her; to prevent which, a Prohibition was moved for, alleging this to be a New Law, not allowed by any Custom or Canon &c. and offered Obedience if there was any such, whereupon the Judges desired the Resolution of the Archbishop, who convened all the Bishops then in London to the Number of 6, and they all agreed and certified, That this was an ancient Custom in the Church of England; thereupon the Prohibition was denied. Palm. 296. Trin. 20 Jac. B. R. Shipden v. Dr. Redman, Chancellor of Norwich.*

S. C. and re-
ported Ver-
batim alike.
Litt Rep.
51. —

66. A *Chaplain*, who was under a *Vicar*, *liell'd against him for a Salary*, and prescribed that the Vicar ought to pay him 4 l. per Annum for his Salary; The Vicar suggested 1st. *That the Chaplains were eligible by himself, and therefore because that Chaplain was not chosen by him, he is not Chaplain, but is in of his own Wrong.* 2dly, *That the Prescription for Salary was triable at Common Law; It was insisted for the Chaplain, that the Salary was Spiritual, as the Cure is, like the Case in D. 58. pl. 4. [it should be pl. 8.] But a Prohibition was granted, till it was determined to whom the Election appertained. Hetl. 36. Mich. 3 Car. C. B. the Vicar of Hallifax's Case.*

67. In Cases of *Licences to marry*, granted by the Ordinary, no Prohibition lies, but the Remedy is by Appeal; But if it comes in Question in Ecclesiastical Court, whether the Words of the Act of 25 H. 8. give sufficient Power to the Archbishop to grant Licence there, if Ecclesiastical Court adjudge against the Power, Prohibition lies, and not otherwise. Jo. 259. Pasch. 8 Car. B. R. Matingley v. Martin.

68. *Assets or not Assets* is triable by the Spiritual Court; Mar. 97. Trin. 17 C. B. Anon.

69. If there be a *Feoffment of Lands and Tithes without Livery*; And upon a Libel for the Tithes, the Court does adjudge the Tithes to pass, though no Livery, a Prohibition shall be granted. Vent. 41. Mich. 21 C. 2. B. R. [But this seems only to be a Point mentioned in Bates's Case, and to refer to the Case of Flutter v. Whiskin Pasch. 35 Eliz. cited by Coke Ch. J. in Cro. J. 269, 270. in Robert's Case.]

70. Libel was by the Church-wardens of &c. in the Ecclesiastical Court *per 1. l. 10 s. 8 d. upon a Custom for Payment of so much for being buried in the Body of the Church*; and a Prohibition was prayed, *suggesting that*

that there was no such Custom; The Court held such a Custom must be good, because the Parish is to be at the Charge to make up the Church Floor; but if the Custom be denied, it must be tried at Law, and therefore inclined, that a Prohibition was to go, tho' it was objected, That this Duty belongs properly to the Ecclesiastical Court, and no Remedy lies for it elsewhere; For so is the Case of a *Modus decimandi*, which may be demanded in the Spiritual Court, but if the Custom be denied, there shall be a Prohibition, and so the Case of a Mortuary, since the Statute of H. 8. And afterwards it being moved again, Hale Ch. J. being present, the Prohibition was granted, which, Hale said, was sometimes granted *Pro Defectu Jurisdictionis*, and sometimes *Pro Defectu Triationis*, as in this Case and others, where the Ground of the Suit is Prescription; For in their Law they have sometimes allowed Prescriptions of 20 Years, sometimes of 40 Years, but we admit none but what are *De Tempore don't &c.* Vent. 274. Mich. 27 Car. 2. B. R. Anon.

71. In a Suit for Fees for swearing Churchwardens, and taking their Presentments a Prohibition was granted. 1 Salk. 330. Hill. 5 W. & M. B. R. Goslin v. Ellison.

72. A. was libelled against in the Spiritual Court Ex Officio for teaching School contrary to the 77th Canon, Anno 1603. which is that no Man shall teach a School, except licenced by the Bishop, and otherwise qualified, as the Canon prescribes, and now A. prayed a Prohibition, suggesting that every Man at Common Law may teach and instruct another, That all Canons, contrary to the Law of the Land are void, and do not bind the Laity whereof he is one, that the Statute of 1 Jac. and 13 Car. 2. have appointed Penalties for keeping School without Licence; And that the Expolition of all Statutes belongs to the King's Courts, and the single Question was *How far this Canon binds a Layman*, which Holt said was no Question to be determined on a Motion, and therefore granted a Prohibition, and that they declare upon it. 12 Mod. 192. Pasch. 10 W. 3. B. R. Oldfield and Sir Richard Raines.

Point never yet determined 12 Mod. 518. in the Case of the King v. Hill. — But a Prohibition having been granted to the Spiritual Court to stay Proceedings there on a Libel for teaching School without Licence, and it being moved in Chancery to discharge the Prohibition, Lord Keeper declared that he always was and still is of Opinion that Keeping School is by the old Laws of England of Ecclesiastical Consequence, and therefore discharged the Order for a Prohibition. Wms's Rep 29 to 32. Mich. 1700. Cox's Case — But upon being moved, That it was for teaching School generally, without saying what School, and that the Court Christian could not have Jurisdiction of Writing Schools, Reading Schools, or Dancing Schools &c. which his Lordship assented to, and thereupon granted a Prohibition as to the teaching all Schools but Grammar Schools, which he thought of Ecclesiastical Cognizance. Williams's Rep 32, 33. ut Supra.

73. Whether Vicarage or Not shall be tried in the Spiritual Court; and so 'tis of an Appropriation. 3 Salk. 378. Trin. 12. W. 3. B. R. Smith v. Waller.

74. Suit cannot be in Spiritual Court for the Fees of a Register; for the Office of Register of Archdeacon is a Freehold, for which an Attize will lie; And if so, a Denial of the reasonable and usual Fees thereof will be a Disseisin of his Office. Per Holt. Ch. J. 12 Mod. 608, 609. Hill. 13 W. 3. B. R. Ballard v. Gerrard.

75. Motion for a Prohibition, suggesting, That where there is a Dispute between a Peculiar, and the Prerogative Court, whether Bona Notabilia or Not, it must be tried by the Common Law, and cited 1 Mod. 211. But per Cur. this must often have happened; And if a Prohibition lay, there must have been frequent Instances of it; where a Prohibition is granted *Pro Defectu Triationis*, it is upon Supposition of different Rules established by the Spiritual and Common Law, as in case of Prescription, But as to Bona Notabilia, the Spiritual and the Common Law are the same, and the Case quoted was not much regarded. 10 Mod. 272. Mich. 1 Geo. 1. B. R. Cottingham v. Loftis.

76. A Parish Clerk, chosen by the Parson by Custom, was libelled against to deprive him for Drunkenness in Church at the Time of Divine Service,

S. P. F. N. B. 40 (L) in the New Notes there (a) — And Holt Ch. J. said, That Prohibitions have deservedly gone to stop Proceedings for teaching School without Licence, because 'tis a

S. C. 1 Salk. 333. Mich. 13. W. 3. B. R.

Service, and for Lewdness, and other Crimes of the like Sort, which rendered him unfit for the Service of the said Office. It was suggested for a Prohibition, that those Crimes are properly punishable by Indictment, and so not cognisable in the Spiritual Court, nor can the Spiritual Court determine that the Party is guilty of Crimes triable by the Course of the Common Law, before he is convicted of them at Law; But on the other Side it was said, That in this Case the Parish Clerk being chose by the Parson his Office is Spiritual, and consequently the Suit for a Deprivation is proper in the Spiritual Court, but admitted that it would be otherwise if the Suit had been to inflict a Corporal Punishment for those Crimes, which are properly indictable, and that so was the Judgment in B. R. in the Case of *Townsend v. Thorpe*. Trin. 13 Geo. 1. where a Consultation was awarded as to the Suit for Deprivation; But the Prohibition stood for so much of the Suit as went to punish the Crime itself; And the Case of *The Corporation of Carlisle* being mentioned to the Court where a Distinction was taken, viz. where the Crime was against the Duty of the Party's Office, as Extortion in a Judicial Officer, he might be proceeded against to a Deprivation or Removal before Conviction of such Crime in a due Course of Law, otherwise not, which Difference was agreed by the Court; And thereupon the Motion was denied Quoad the Deprivation, that Matter having been solemnly settled in the Case of *Townsend and Thorpe* aforesaid. Gibb. 189. Hill. 4 Geo. 2. B. R. *Newcomb v. Higgs*.



(G) For Seats in the Church.

The Disposal of Seats in the Mother Church belongs to the Ordinary, and so of Seats in a Chapel of Ease belonging to the Mother Church; and to know whether it be a Church or not, is by knowing whether it has *Baptisterium et Sepulchrum*. 12 Mod. 228. *Lee v. Daniel*.

1. **T**HE Disposing of the Seats in Navi Ecclesiæ belongs of Common Right to the Ordinary of the Diocese, so that he may place and displace whomsoever he please.

12 Rep. 104. 2. If a Man and his Ancestors, and all those whose Estate he has in a certain Messuage, have used Time whereof Memory &c. to repair an Isle in the Church, and to sit in it and no other, the Ordinary cannot displace him; for if he displaces him a Prohibition lies; because he has it by Prescription for a reasonable Consideration. M. 11 Ja. B. R. Per Curiam. M. 10 Ja. B. Per Curiam. *Pimble's Case*. Hobart's Reports 95.

12 Rep. 104. S. C. by Name of Corven's Case. — alias Corven v. Pym — S. P. Cro. J. 366. Hill. 12 Jac. in the Case of *Frances v. Ley*. — But where a Libel was for a Seat in a Church, the Defendant surmised in C. B. That he and his Ancestors have used Time out of Mind &c. to have an Isle with a Seat in the said Church for himself and Family, and thereupon pray'd a Prohibition; But because it did appear upon Examination of the Party himself, That the * Parish have always used to repair the said Isle and Seat, the Court would not grant a Prohibition; for that proves, That his Ancestors were not the Founders of the said Isle and Seat. Also another Man hath always used to sit with him in the said Seat, which also proves, That it does not belong to him alone. Godb. 199. pl. 286. Trin. 10 Jac. C. B. *Garven v. Pym*. — But otherwise for a Seat in an Isle, a Man may prescribe; because it may be presum'd, That his Ancestor, or he whose Estate he has in the House and Land in the Parish, had built the Isle. Mo. 878. pl. 1232. Mich. 10 Jac. *Pym v. Gorwin*. — 12 Rep. 104. *Corven's Case* accordingly, and that it shall be intended that such Building the Isle was done with the Assent of the Parson, Patron, and Ordinary to the Intent to have it only to himself. — S. C. 3 Inst. 202. cap. 97. — 2 Watf. Comp. Inc. 8vo. 711. cap. 39. cites S. C.

* If the Isle has been used to be repaired at the Charge of all the Parish in Common, the Ordinary may there from Time to Time appoint whom he pleases to sit there, notwithstanding any Usage to the contrary. Resolv'd Per Cur. Cro. J. 366. Hill. 12 Jac. in the Star-Chamber *Frances v. Ley*.

3. If a Man prescribes, That he and his Ancestors, and all those whose Estates they have in a certain Messuage, have used to sit in a certain Seat in Navi Ecclesiæ Time whereof Memory &c. in Consideration that he &c. have used Time whereof Memory &c. to repair the said Seat. If the Ordinary removes him from this Seat, a Prohibition lies; for the Ordinary has not any Power to dispose of it; for it is a good Prescription; and by Intendment there may be a good Consideration for the Commencement of this Prescription, tho' the Place where the Seat is be the Franktenement of the Parson. *Tr. 12 Ja. B. Crosse's Case Resolved per Curiam, and a Prohibition granted to the Bishop of Exeter; for Crosse was a Parishioner of his Parish of Silvertown. M. 13 Ja. B. between Laigh and Hussey. Resolved, and Prohibition granted and tried by Verdict. M. 13 Ja. B. between * Boothby and Day or Bailly. Hobart's Reports 95. Same Case.*

he must claim it as belonging to his House, and not otherwise; for properly it belongs to the Manor-House, if any Manor be, and not to the Manor which includes other Tenants, Farmers, and Inhabitants.

One can't prescribe for a Seat in the Body of the Church, but those are disposable by the Parson and Churchwardens; But for a Seat in an Isle he may. *Mo 878. Pym v. Gorwin.* — In a Prohibition the Question was, Whether a Prescription to an Isle in a Church which he and all those &c. us'd to repair as belonging to a Manor where he had no Dwelling-House, but only Land, were good? The Court inclin'd that it was not good, but order'd the Prohibition to go and Defendant to plead, that it come Judicially before them. *2 Mod 283. Hill. 29 & 30 Car. 2. C. B. Shambrook v. Pettipiece.*

A Prescription for a Seat in the Church *Ratione Messuagii* where he inhabits, is a Temporal Thing, and a Prohibition was granted. *Noy 129. Anon.*

A Libel was in the Bishop's Court of Exeter for a Seat, which the Churchwardens had assigned to M. in whole Right the Plaintiff claimed to sit there; The Defendants there suggested now for a Prohibition a Prescription by a *Que Estate* for the Seat, as being an ancient Seat and belonging to their Tenement in *W.* and that they and all those &c. had used to repair it. It was doubted, Whether this Prescription in *Navi Ecclesiæ* was good, but it were good in an Isle. The Court inclin'd that such Prescription in *Navi Ecclesiæ* may be for special Cause, as for Repairing, but they would not grant a Prohibition. *5 Mod 436. Pasch. 11 W. 3. Crook v. Sampson.*

Where a Man has a Right by Prescription to a Seat in the Church, he may sue in the Spiritual Court for quieting his Possession, and may admit his Prescription to be try'd there as a Defendant does a *Modus* or a Pension by Prescription. *2 Salk. 551. Jacob v. Dallow. — 5 Mod. 436. Pasch. 11 W. 3. S. C.*

* *Hob. 69. pl. 79. S. C.*

4. But if a Man prescribes to have a Seat in Navi Ecclesiæ generally, without the said Consideration of Repairing the Seat, yet the Ordinary may displace him. *M. 11 Ja. B. R. Per Curiam. M. 13 Ja. B. between Boothby and Day or Bailly. Hobart's Reports 95. S. C. Per Curiam.*

burying there, without using to repair it, gains no peculiar Property. *Cro. J. 346. Frances v. Ley. — S. P. Noy 104. Day v. Bedingfield.*

Reparation of a Seat ought to be given in Evidence, tho' it be not mentioned in the Declaration. *Sid. 203. Pasch. 16 Car. 2. B. R. in Case of Baxton v. Bacon.*

5. The Ordinary hath nothing to do with the Seats in the Chapels annex'd to the Houses of Laymen, as of Nobles &c. *Tr. Ja. 12 B. Agreed.*

6. If a Layman, by the Dissolution of Monasteries, has a Monastery, in which is a Church, Parcel thereof, and he sues the Parishioners by a long Time to come to it to hear Divine Service, and to use it as their Parish Church; This shall give Jurisdiction to the Ordinary to order the Seats, because now in Fact this is a Parish Church, tho' before it was not subject to the Ordinary. *Tr. 12 Ja. B. Busward's Case held.*

7. If there be a Custom in a Parish, That 12 of the Parishioners may elect Churchwardens, the which Churchwardens have Power by the Custom to repair the ancient Seats, to erect New in Navi Ecclesiæ, and appoint what Persons shall sit in them. And the Churchwardens so elected erect a New Seat in Navi Ecclesiæ, and appoint a certain Man to sit there, and after the Ordinary decrees, That another shall have the

S. C. by Name of Hussey v. Leyton. 12 Rep. 105. Pasch. 11 Ja. in the Star-Chamber. Resolved accordingly. For if he hath it by Prescription, he has as good a Right in the Seat as he has in his House; but observe,

12 Rep. 105; Corven's Case S. P. — See of an Isle in the Church, and constant sitting and

Poph. 140. S. C. by the Name of Thabin v. Tratum, and a Prohibition was granted, be-

cause this
Grant to
One and his
Heirs is not
good; for

* Fol. 289.

the Seat be-
longs not to
the Person
but to the

House; and should it be otherwise, then when the Person leaves this Place and dwells in another he might retain the Seat, which is not reasonable.

It was suggested for a Prohibition, That *Time out of Mind the Parishioners, at their own Charge, had repaired all the Seats in the Church*, and that by reason thereof they had been *Time out of Mind* dispossessed of by the Churchwardens, but that the Bishop had now taken upon him the Disposal of the Seats; And for the Plaintiff was cited this Case of Tredennick. Jones J. said, That *De Communi Jure* the Ordinary has the Disposal of the Seats, and *De Communi Jure* the Parishioners ought to repair them, and so nothing appears here to oust the Ordinary of his Jurisdiction; for they have only said, That the Parishioners have repaired at the Charge of the Parish, which is no more than what is their Duty to do, and for which they have the Easement of sitting in them, tho' by the Disposition of the Ordinary; whereupon the Prohibition was deny'd by the whole Court. 2 Lev. 241. Hill. 30 & 31 Car. 2. B. R. Greaterby v. Beardley. — Raym. 246. S. P. in the same Term in C. B. Langley v. Churt, where the Case was, as appear'd by the Libel, That one B. being *seised of Land* in Stretham, in 1611. *built a House* upon it *and a Pew* in the Church *at his own Cost* in 1637, *for himself and his Family*, and afterwards sold House and Pew to Chute the Defendant and his Heirs; and the Ordinary by Sentence in the Ecclesiastical Court annex'd the Pew to the said House. Notwithstanding which the Churchwardens would have plac'd the Plaintiff in the said Seat. But by the Ch. J. & 2 J. a Prohibition was deny'd; And the Ch. J. said, That if such Suggestion should hold, the Ordinary's Jurisdiction would be totally set aside; But Atkins J. held that a Prohibition lay, because this Case did not differ from the Case of Brabin. And North Ch. J. observ'd, That in the Principal Case the Defendant claim'd only for himself and Family, whereas *had he claim'd for him and his Heirs*, he seems to admit, That a Prohibition would lie.

A Prohibition was pray'd to the Spiritual Court, where the *Parishioners prescribed to dispose of the Pews exclusive of the Ordinary*. But per Cur. that cannot be; And the Ordinary's not acting might be, because there was no Occasion for his intermeddling; but that cannot vest the Right in the Churchwardens, who are only a Corporation capable of Goods, but not of Inheritance; Sed Adjournatur. 1 Salk 107. Hill. 3 Anne. B. R. Pregrave v. Churchwardens of Shrewsbury.

Watf. Comp. Inc. Svo. 13. cap. 39. cites S. C. 8 If a Layman, by the Dissolution of Monasteries, has a Monastery, in which is a Church, Parcel of it, and he suffers the Parishioners about 60 Years to come there and hear Divine Service, and he himself has used by all that Time to have the Placing of Men there in the Seats, the Ordinary cannot displace them, because the said Patron had used by all the Time that it had been used for the Parish Church, to have the Placing in the Seats. Cr. 12 Ja. B. Buzard's Case.

See pl. 6.

9. A Foreigner, tho' occupying Lands in the Parish, shall not be tax'd for Reparations of Seats in the Church, because he has no Benefit by them in particular. Per Omnes. 2 Brownl. 10. in the Case of Glover v. Wendham.

Palm. 424. S. R. Carleton v. Hutton — Noy 78 S. C. — All Controversies concerning Seats in a Church are determinable before the Ordinary, except where one claims a Seat by Prescription. Per Cur. 12 Mod. 401. Pasch. 12 W. 3. B. R. Anon.

All Contro-

versies concerning Seats in a Church are determinable before the Ordinary, except where one claims a Seat by Prescription. Per Cur. 12 Mod. 401. Pasch. 12 W. 3. B. R. Anon.

11. It was suggested for a Prohibition, That within such a Parish there is such a Custom that the Inhabitants of such and such ancient Tithings have sat in the first Seat of such an Isle, that the Bishop removed them, and gave Licence to others to sit there; and because they went to try the Custom in the Spiritual Court, he pray'd Prohibition inasmuch as it is an Idle Custom; and that where Courts held Plea for an Idle Custom, they should be prohibited, and cited the Case of Topfall and Ferrers. Hob. 175. But 'twas deny'd; and Pemberton Ch. J. said, That here besides Custom, the Court has *Conjuncture of the Matter*, Placing and Displacing being in the Ordinary, so that if the Custom were out

of the Cafe, yet they might proceed; but in *Topfall's* Cafe they proceeded only upon the Custom, which being a *vain unreasonable* one, they were prohibited. Skin. 7. Mich. 33 Car. 2. B. R. Anon.

12. The Plaintiff brought an Action of the Cafe, and declar'd, That he was *seised of 3 Seats* in such a Part of the Church, belonging to an ancient Messuage, and that the Defendant disturbed him &c. Exception was taken, 1st, For that he *shews not, That he hath repaired* these Seats; This was hold a good Exception, and that he ought as well to shew it in an Action Sur Cafe as upon a Prohibition. 2dly, For that he prescribes that he was *seised of 3 Seats appertaining to an House*, whereas he ought to say, Of an *House, to which the Seats were appertaining*. And it was said in this Cafe, That the Freehold of a Seat may be in One, tho' all the Church besides be in the Parson; because Churches are of Lay Foundation, and the Patron might at first except it; But this shall *not be intended unless specially shewn*. Skin. 34. Hill 33 & 34 Car. 2. B. R. Freeman v. Dane.

13. Bill to *quiet one in the Possession of an Isle in the Church*, the Plaintiff having obtained a Decree before the Ordinary, was dismiss'd with Costs; For this Court executes not their own Decrees by a Bill without examining the Justice thereof, but we can't examine if the Bishop has done Right, nor will such a Decree bind his Successors. 2 Vern. 226. Pasch. 1691. Baker v. Child.

14. The Churchwardens of Ludlow were libell'd against for *pulling down Seats* between such and such Isles of the Church, and anciently belonging to the Lord President of Wales &c. *without Leave of the Bishop, and for erecting new Seats* there, and *placing People therein after Admonition* &c. The Plaintiffs suggest for a Prohibition the Statute of Magna Charta, That no Man shall be disseised of his Freehold &c. That all Customs and Prescriptions ought to be tried at Common Law, That in the Parish of Ludlow the Churchwardens, *by the Consent of the Parishioners &c. have used* to dispose of Seats in the Church &c. That they had disposed of certain Seats to the Bailiffs of Ludlow, which being ruinous, the Plaintiffs, by the Command of the said Bailiffs, pulled down, and erected new Seats in the Place of the old ones, notwithstanding which, the Defendant cited them into the Spiritual Court &c. A Prohibition was granted. 2 Lutw. 1032 & 1037. Mich. 4 W. & M. Colebatch v. Baldwyn.

15. Prescription for a Pew in a Church by Reason of his House; Affidavits were made, That he was *not*, nor is an *Inhabitant* there; This is not sufficient, for *Possession only* is enough without living there. 12 Mod. 40. Pasch. 5 W. & M. B. R. Anon.

16. It was said that anciently there were no Pews in Churches, but only Forms, and that it had been a *good Prescription* to say that Time out of Mind the Corporation did repair such an Isle in the Church, *Ratione cujus* the Mayor and Aldermen sat there; for tho' the Right be in the whole Body, the Enjoyment may be and enure to a select Number. 6 Mod. 231. Mich. 3 Ann. B. R. in Cafe of Jacob v. Dallow.

17. A Libel was for *two Seats in the Parish-Church* of King's Norton; the Defendant pleaded that she was in *Possession of two Ancient Messuages* to which those Seats belonged; which Plea being rejected by that Court, the Plaintiff now moved for a Prohibition, which was opposed, for that the Church was *New built* by the Parishioners; and for that Reason there could be no Prescription to the Seats, but that they were in the Gift of the Bishop so; a Consultation was prayed. The Plea tendered by the Defendant was such as could not be tried in the Spiritual Court, because they cannot hold Plea of the Inheritance of the Seats, nor of any Thing which concerns the Freehold; so the Prohibition must stand. 8 Mod. 338. Mich. 11 Geo. 1-25. Swetnam v. Archer.

(H.) Jurisdiction. *Reparation.* [Of the Church.]1. **THE Ecclesiastical Court has Conscience of the Reparation**
Navis Ecclesiae. Co. 5. *Jeffries Case* 67. Resolved.

A Libel was
for not paying
to the Repairs
of the Church,
and for Books
and Vest-
ments, with-
in which
Parish he
had Lands

2. If a Man continues, and inhabits in one Parish, and has Land in another Parish which he himself occupies there, he shall be charged for this Land to the Reparation of the Church of the Parish in which the Land lies; because he may come there when he will, and he is to be charged in Respect of the Land. Co. 5. *Jeffrey* 67. Resolved. Cr. 11. Ja. B. *Andrews's Case*; per Curiam. Contra B. 40. 41. Et. B. R. per Curiam.

in his Hands, but was not an Inhabitant, nor had any House therein. And this being suggested for a Prohibition, Popham was at first of Opinion that it was not good, because such as do not inhabit within the Parish have no Benefit of the Divine Service there. But upon shewing the Precedent of this Case of *Jeffries v. Foster*, and to the Opinion of which Case all the Justices here agreed, Popham chang'd his Opinion. Cro. E. 659. Pasch. 41 Eliz. B. R. *Paget v. Crompton*,——S. P. resolv'd as to the having Lands in a Vill, and not inhabiting there. Cro. E. 543. pl. 24. Trin. 43 Eliz. C. B. *Stephenson v. Case*.——But in a Prohibition in B. R. it was held, That no Man should be charged for his Land to contribute to the Church Reckonings, if he doth not dwell in the same Parish, or unless he consents thereto. Mo. 554. pl. 749. *Penner v. Crompton*.

But Pasch 8 Jac. it was resolv'd by the whole Court, That for and towards the Reparation of a Church, the Land of all, as well of Foreigners there inhabiting, as of all others, is liable thereunto; and this is so by the general Custom of the Place, and this is to be raised by a Rate imposed according to the Value of the Land, and that in the Nature of a Fifteenth; and this is not meerly in the Realty. And by Williams and Yelverton Justices, and Fleming Ch. J. it is not the Land but the Person of him who occupieth the Land is to be charged. Per Yelverton J. A Man is chargeable for Reparations of a Church by Reason of the Land, and for the Ornaments in the Church by Reason of his coming to Church. And per Williams J. and Fleming Ch. J. If the Party have Land there, he is chargeable for both, whether he comes to Church or not; for that he may come to Church if he please. 1 Bullt. 20. in an Anonymous Case.——S. P. 2 Roll. Rep. 262. Mich. 20 Jac. in *Wilmore's Case*.

S. C. and
P. cited and
agreed by
the Justices,
and there-
upon Pop-
ham Ch. J.

3. But if an Inhabitant of a Parish leases his Land which he has in another Parish, reserving a Rent, he shall not be charged where the Land is in Respect of the Rent; because there is a Parishioner and Inhabitant who may be charged. Co. 5. *Jeffery* 67. b. Resolved. B. 5 Ja. B.

chang'd his former Opinion, in the Case of *Paget v. Crompton*. Cro. E. 659.——When there is a Farmer of Land, he shall not be charged alone; for there is no Reason that a poor Husbandman that pays Rent for his Land, and perhaps to the utmost Value, shall build Churches; but as it may be unknown to the Parishioner and Churchwardens who has the Fee in Reversion, they may for that Reason impose all the Tax upon the Farmer, and he by Way of Answer may say in the Spiritual Court that he is Farmer; and thereupon the Tax shall be divided between him and his Landlord, according to the Rate that his Land is of greater Value than the Rent, and upon the Landlord according to the Quantity of the Rent, Quod non fuit deductum. Quere; for in *Juffre's Case*, 5 Rep. it is resolv'd, That the Farmer only is chargeable, and that Consultation was granted, but not for this Reason, but because the Reversioner had pleaded an insufficient Plea in the Spiritual Court, viz. That he was not an Inhabitant &c. which was not a good Plea, and also for the great Delay which he had used, having brought two Appeals, and after a Prohibition, and so had put the Parish to 60 l. Expence for the Reversioner, &c. and for this Reason principally, and not upon the Matter in Law, was the Consultation awarded; for he had surceas'd his Time. 2 Roll. Rep. 270. Hill. 20 Jac. B. R. The Churchwardens of . . .——In such Case the Tenant must be charged, and not the Owner, and the suggesting that the Lands were in the Occupation of the Tenant, and that himself did not inhabit there, is a good Suggestion for a Prohibition. 4 Mod. 148. Trin. 4 W. & M. B. R. Anon.

4. A Man cannot be charged, in the Parish where he inhabits, for Land which he has in another Parish, to the Reparation of the Church; because then he may be twice charged; for he may be charged for it in the Parish where the Land lies. Id. 16 Ja. B. R. *Sir H. Butler* against *Jeffrey* 67. Resolved, and Prohibition granted. Co. 5.

5. If a Petit Chapman takes a Standing for a Rent in the Wafts of S. P. 4 Mod. 148 Trin. 4 W. & M. B. R. in an Anonymous Case.
Manor within the Market for 2 or 3 Hours every Market-day, to sell his Commodities, the Market being held there one Day every Week, but he inhabits in another Parish, he cannot be rated to the Reparation of the Church for this Standing. B. 20 Ja. B. R. between *Hollynes* and the Churchwardens of *Kettering* in *Northamptonshire*; Resolved, and Prohibition granted accordingly.

6. If a Citizen of London erects a House in the Parish of A. to dwell there in the Time of the Sickness in London, and has not any Land in the Parish, and after he is assels'd 20 s. for the Reparation of the Church, where others who have 100 Acres of Land in the same Parish pay but 6 d. yet no Prohibition shall be granted upon Suit for the 20 s. in Court Christian, because they have Jurisdiction of the Thing; and therefore may order it according to their Law. B. 5 Ja. B. Sir Robert Lee's Case, per Curiam.

that the Parishioners ought to be rated according to the Value of their Sheep-walks, and not of their Farms or Houses. 2 Roll R. 463.

7. If there be a Chapel of Ease in a Parish, and some Part of the Parish have used Time whereof Memory &c. alone, without others of the Parishioners, to repair the Chapel of Ease, and there to hear Service, and marry, and do all other Things, but only they bury at the Mother Church, yet they shall not be discharged of the Reparation of the Mother Church, but ought to contribute to it; for the Chapel was ordained only for their Ease. B. 13 Ja. B. between the Wardens of *Ajston* and the Inhabitants of *Castle Bromage*. Hobart's Reports 91. suggested

that they had in B. a Chapel Parochial and Parochial Rites, and that they repair their own Chapel, and that Ratione inde Time out of Mind they have been discharg'd of the Repair of the Parochial Church of A. The Court granted a Prohibition, and ordered the Plaintiffs to declare, who declar'd that they had in B. a Chapel Parochial or Church of B. within the Parish of A. where Time out of Mind have been a Body of a Church, Chancel, Bells, and all other Parochial Trophies, and Divine Service and Sacraments, and a distinct Perambulation of B. and A. severally. And that the Inhabitants of B. never went to the Church of A. nor have they any Seats there, and that they have distinct Churchwardens; and make no other Use of the Church or Churchyard of B. but for Burial only, and that Time out of Mind they have repaired their Parochial Chapel of B. and the Inhabitants of A. have been exempted from that Charge, and Ratione inde the Inhabitants of B. have Time out of Mind been discharged from repairing the Church of A. and yet have the Defendants libell'd against them to repair it &c. The Defendants demurr'd; it was intitled for the Plaintiff. 1st. That a Prescription generally, without shewing any Cause to exempt them from Repair of the Parish Church, is not good; for of common Right every Parishioner is liable to it. 2dly A. to what is said, that they repair their own Parochial Chapel, that cannot be a sufficient Cause, because it is for their own Ease; and therefore cannot discharge them from what they are liable to of common Right. 3dly. If there is any such Custom, it might be pleaded in the Spiritual Court; and this by the express Words of the Statute Circumspete agatis, viz. De Ecclesiâ discoopita vel Censu exco non clau's non pater Prohibition. It was admitted on the other Side, That a general Prescription to be discharged from Repairing &c. is not good; but here is a good Cause shewed, (viz.) Want of Seats in the Parochial Church, and not going thither, unless to bury; and this might have a reasonable Commencement, as by an Agreement upon the multiplying the Houses in the Parish, and its growing more populous. Beside, Here is a Custom alleg'd; and tho' the Repairs of Churches is expressly within the Statute Circumspete agatis, yet when a Custom is in Question, it is a Temporal Matter, and must be tried in the Temporal Court, because their Law and the Common Law differ in the Essence of Custom; and the Court was of this Opinion, to adjudged that Prohibition lies. And the Court advised the Defendant to take Issue upon the Custom. 2 Lev. 186. Hill. 28 & 29 Car. 2. B. R. Wife v. Creeke.

8. So in the said Case, if the Inhabitants, who use to repair the Chapel, prescribe that they Time whereof Memory &c. have us'd to repair the Chapel, and Ratione inde have been discharged of the Reparation of the Mother Church, yet this shall not discharge them of the Reparation of the Mother Church; because it is not any direct Prescription to be discharged, but it is Ratione inde; scilicet, of the Reparation of the Chapel. B. 13 Ja. B. in the said Case of *Ajston*.

they are a Parochial Chapel in another Parish, and that the Inhabitants of the Chapelry have Time out of Mind had a Parochial Chapel, and Divine Service and Sacraments &c. and have used to be exempted from the Repair of the Parochial Church, Bells &c. in Consideration that they have been charged for the Repairing their own

Fol 290.
Label was for Repairs of the Church and Bells. It was suggested for a Prohibition, That

own Chapel, and that they have repaired the same &c. And the Prohibition was granted. 2 Lev. 107. Pasch. 26 Car. 2. B. R. *Brown v. Palfry*.—3 Keb. 286. 325. S. C.—By Reason of Repairing a Chapel of Ease, that he had been Time out of Mind exempted from contributing towards the Repair of the Church, was held a good Prescription. *Freem Rep.* 463. pl. 644. Trin. 1678. *Wife v. Green*.

A Prohibition was moved for *The Libel was for Rates towards the Repair of a Church*; it was suggested that they had us'd to repair a Chapel a *Tempore curus* &c. but forasmuch as they had not alleged it to be a Chapel that had all Parochial Rates the Prohibition was denied; for if but one is omitted (as Burial) no Prohibition shall go, and therefore they were advised to amend the Suggestion. *Comb.* 152. Trin. 1 W. & M. in B. R. *Husley v. Cuslock*.

9. If the Chapel be 3 Miles distant from the Mother Church, and the Inhabitants who us'd to come to the Chapel have us'd always to repair the Chapel, and marry and bury there, and never within 60 Years were charged to repair the Mother Church, yet this is not any Cause to have Prohibition, but they ought to shew in the Spiritual Court their Exemption, if they have any, upon the Endowment. *Hill.* 8 Car. B. R. *Per Curiam*, Prohibition denied, it being moved by *Dr. South*.

See (K) p. l.
3, contra.

10. If a Man be sued in the Spiritual Court for Reparation of the Church, no Prohibition shall be granted upon a Surmise that other Persons have Land within the Parish, who ought to be charged with the Reparation of the Church as well as himself, and are not charged with it; for if this be true, it is a good Plea there, and if they do not allow it he ought to appeal. *Tr.* 9 Car. B. R. between *Per Curiam*, and Prohibition denied accordingly.

See pl. - and
8 in the
Notes.

11. If the Men inhabiting in a Chapelry prescribe to be discharged Time whereof Memory of the Reparation of the Mother Church, and they are sued for Reparation of the Mother Church, a Prohibition lies upon this Surmise. *Hobart's Reports* 92.

12. A Libel was for a Rate for Repairing the Church. The Defendant suggested, 1st. That his Lands were over-valued, viz. 100 l. per Annum. when they were worth but 60 l. 2dly. That there was a Custom in the Parish that they ought not to be rated after the Value of their Houses and Lands, but only according to the Value of their Sheep-Walks. As to the first, all the Court except *Whitlock* resolv'd, that the Rates ought to be according to the Value of their Lands; and therefore the Valuation thereof properly belongs to themselves; and the Church being the House of God, a Custom in Prejudice of the Repairs thereof is void, for of common Right Houses and all Lands are chargeable to it. And the Court ordered him to suggest the Custom, and omit the Value, and then they would consider whether a Prohibition should go. 2 Roll. R. 463. Mich. 22 Jac. B. R. *Holland v. Kirton*.

13. It was suggested for a Prohibition, That there was a Custom in the Parish that the Parishioners should be rated towards Repair of the Church, so that such Tax be in Proportion to the Tax *Pro Domino Rege*; and that the Tax there for his Lands to the King was but 2s. and yet he was rated to the Church 5s. *Per Cur.* This a Spiritual Matter, and ought to be tried in the Spiritual Court. And so a Prohibition denied; but if any Thing is offered in Proof, which is allowable by our Law, and they will not allow of it, in such Case a Prohibition shall go. Besides, it is not shewn what Sort of Tax this Tax *Pro Domino Rege*, which he mentions, is; but it is utterly uncertain. And afterwards a Consultation was awarded by the whole Court. *Lat.* 217. Pasch. 3 Car. *Longmore v. Churchyard*.

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seems to be
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236. pl. 2.
Anon. And
there it is
said, That in
Case of a

14. In a Prohibition it was the Opinion of the whole Court, That if a Church be so much out of Repair, that it is necessary to pull it down, and that it cannot be otherwise repaired, then, upon a General Warning given to the Parishioners, the major Part of the Parishioners then meeting according to such Notice may make a Rate for pulling down of the Church, and Building of it upon the old Foundation, and for making of Vaults where necessary (as they were in this Church, by reason of the Springs)

ing Water) And though the Rate be higher than the Money paid for doing all this, yet it is good, and the Churchwardens are chargeable for the Overplus, they not being able to compute to a Shilling. And that if any of the Parithioners refuse to pay their Proportion according to the Rate, they may be libelled against in the Spiritual Court; and if the *Libel alleges the Rate to be Pro Reparatione Ecclesie generally*, tho' in Strictness *Ecclesia* contains both the Body and Chancel of the Church, yet by the Opinion both of the Court of C. B. and of the Exchequer, *it shall be intended*, that the Rate was only for the Body of the Church; But in this Case it was made appear clearly, that the Rate was only for the Body, and that the Minister was at the Charge of the Chancel. And both Courts agreed, That when a Prohibition is moved and desired, on Purpose to stop so good a Work as the Building a Church, the Court will not compel the Parties to take Issue upon the Suggestion, when upon Examination they find it to be false, and therefore will not grant a Prohibition; For if the Rate be unduly imposed, the Party grieved hath a Remedy in the Spiritual Court, or may appeal if there be a Sentence against him. Afterwards the Court of B. R. was moved for a Prohibition in this Case, and it was denied. So that in this Case there was the Opinion of all the 3 Courts. 2 Mod. 222, 223. Pasch. 29 Car. 2. in Scacc. St. Mary Magdalen Bermondsey Church in Southwark.

Church's being so much out of Repair, the Bishop's Court must proceed against the whole Parish to have it repaired; And that if a Church be down, and the Parish increased, so that of Necessity they must have a larger Church, the Major Part of the Parish may raise a Tax for the enlarging it, as well as

the Repairing it, and that the Consent of every Parishioner is not necessary,

15. A *Libel* was in the Ecclesiastical Court of Hereford against the Parson *Improprite*, to repair the Chancel of Bradwarden. Upon a Suggestion, That one J. S. had a Seat there Time out of Mind for him and his Family, and Privilege of Burial there, and that he Time out of Mind had used to repair the Chancel, a Prohibition was granted, because this is a Prescription triable at Common Law. Freem. Rep. 300. pl. 360. Trin. 1681. C. B. Anon.

16. The Plaintiff being sued in the Ecclesiastical Court for Repairs of the Church suggested, That he had built an Isle, and repaired it at his own Charges, and moved for a Prohibition. Cur. unless it be suggested, That he fits in the Isle, and hath no Benefit of the Navis Ecclesie, there is no Cause for a Prohibition, for a Man may build an Isle for his Convenience. Freem. Rep. 301. pl. 363. Trin. 1681. C. B. Weeks v. Oxenden.

17. Prohibition was prayed to the Consistory Court of London, because Suit there was against the Master and Wardens of the Company of - - - - for a Tax imposed upon the Hall of the said Company for the Repair of the Parish Church; And it was said that the Tax is not imposed upon them in their Natural Capacity, but upon the Lands of the Body Politick. Per Cur. a Prohibition shall not issue; For the Land of the Company are chargeable to the Repairs, and the Spiritual Court (who has the Consuance of the Matter) has no other Process than Citation, which cannot be executed upon an Aggregate Corporation, which is not visible in Law; Ergo the Citation of Necessity ought to issue against the Officers of the Corporation, to whom it belongs to pay the Tax, and Allowance may be made to them upon their Account. 2 Jo. 187. Hill. 33 & 34 Car. 2. B. R. Thursfield v. Jones.

18. *Libel* was, That the Church and Chancel of D. were out of Repair, and that the Churchwardens made a Rate upon the Inhabitants for the Reparation of Both, and that they accordingly had repaired Both, and beautified the same with Ornaments. It was suggested for a Prohibition, That of Common Right the Chancel should be repaired at the sole Charge of the Parson; And that Rates for Repair of a Parish Church should be made by the Parishioners, or the Major Part of them, and not by the Churchwardens alone. And by Holt Ch. J. by the Civil and Canon Law the Parson is obliged to repair the whole Church, and it is so in all Christian Kingdoms but in England; For it is by the peculiar Law of this Nation, that

12 Mod. 83.
S. C. by Name
of Price v.
Rouse —
Salk. 165.
S. C. by
Name of
Pierce v.
Proule —
5 Mod. 259.
Hawkins's
Case, and
there the

Libel set forth an ancient Custom in the said Parish, That the Adorning the Inside of the Chancel had been done by the Churchwardens at the Charge of the Owners and Occupiers of Houses within the Parish by a Rate to be made with the Consent of the Major Part of the Parishioners having Respect to the annual Value of the Houses, That the Chancel wanted Reparations and Ornaments, and that the Churchwardens with Consent &c. made a Rate confirmed by the Bishop, whereby the Defendant was rated 17 l. 1 s. for Mills and Racks, within the said Parish, which was his due Proportion according to the yearly Value of the Houses there, and that he had not paid the same. The Defendant denied the Custom, which was found for the Plaintiff, but for the Defendant it was found, That the Rate was not made by the Major Part of Parishioners. Per Curiam, *without a special Custom the Parishioners are not to repair the Chancel*; the Parson is bound to do it of common Right, but *where a Temporal Inheritance is to be charged by a particular Custom, the Churchwardens must bring the Defendant within the Custom*, otherwise it is not good; For it is the Custom that gives the Jurisdiction; Now in this Case the Custom was alleged for Owners of Houses to repair, and they have rated the Defendant, as Owner of a Mill, which cannot be intended a House; For in a *Præcipe quod reddat*, a Mill cannot be demanded by the Name of *Domus*, but it must be *De Molendino*. Carth. 360. Mich. 7. W. 3. B. R. Hawkins v. Rous.

the Charge of the Owners and Occupiers of Houses within the Parish by a Rate to be made with the Consent of the Major Part of the Parishioners having Respect to the annual Value of the Houses, That the Chancel wanted Reparations and Ornaments, and that the Churchwardens with Consent &c. made a Rate confirmed by the Bishop, whereby the Defendant was rated 17 l. 1 s. for Mills and Racks, within the said Parish, which was his due Proportion according to the yearly Value of the Houses there, and that he had not paid the same. The Defendant denied the Custom, which was found for the Plaintiff, but for the Defendant it was found, That the Rate was not made by the Major Part of Parishioners. Per Curiam, *without a special Custom the Parishioners are not to repair the Chancel*; the Parson is bound to do it of common Right, but *where a Temporal Inheritance is to be charged by a particular Custom, the Churchwardens must bring the Defendant within the Custom*, otherwise it is not good; For it is the Custom that gives the Jurisdiction; Now in this Case the Custom was alleged for Owners of Houses to repair, and they have rated the Defendant, as Owner of a Mill, which cannot be intended a House; For in a *Præcipe quod reddat*, a Mill cannot be demanded by the Name of *Domus*, but it must be *De Molendino*. Adjournatur.

* Libel was against the Parish for not paying a Rate made by the Churchwardens only, and this being suggested for a Prohibition, and that by the Law the Major Part of the Parish must join; It was said by Twissden J. that perhaps *no more of the Parish would come together*; To which it was said by the Counsel for the Prohibition, That if that did appear it would be something. Mod. 79. Mich. 22 Car. 2. B. R. Anon. — S. P. per Cur. Vent. 367. Trin. 35 Car. B. R. Thursfield v. Jones

The Spiritual Court may compel the Parishioners to repair their Parish Church if out of Repair, and may excommunicate every one till it be repaired, and such as are willing to contribute must be absolved till the greater Part of them agree to assess a Tax, but the Court cannot assess them towards it; Per North Ch. J. to which the others agreed, And that the Churchwardens cannot; For none but a Parliament can impose a Tax; but the greater Part of the Parish may make a By-Law, and to this Purpose they are a Corporation; *But if a Tax be illegally imposed*, as by a *Commission from the Bishop to the Parson and some of the Parishioners to assess a Tax*, yet if it be assented to, and confirmed by the major Part of the Parishioners, they in the Spiritual Court may excommunicate such as refuse to pay it. Mod. 194 Hill. 26 & 27 Car. 2. C. B. pl. 25. Rogers v. Davenant. — S. P. And † a Prohibition was granted to a Libel for a Tax made by some Parishioners by virtue of a Commission from Dr. Exton the Chancellor of London, because that Way of Taxation by Commissioners is against Law; And though the Spiritual Court may compel the Parishioners to make a Tax, yet they cannot constitute Commissioners to make one. Freeman Rep. 286, pl. 330. Hill. 1674. Anon. but seems to be S. C. — S. P. 2 Mod. 223. Pasch. 29 Car. 2. in the Exchequer by North Ch. J. said it had been lately ruled so in C. B. — S. P. by Holt Ch. J. 12 Mod. 328. Mich. 12. W. 3. and that the Spiritual Court may excommunicate for not meeting and making a Rate; And that though one, who sues in the Spiritual Court, omits in his Libel any Matter which would make against him, as was done in the principal Case there, viz. That the Rate was made by the Commissioners of the Ecclesiastical Court, yet *they of the other Side may suggest it*.

* Noy. 131. Heale v. the Churchwardens of Hobleton. † This is misprinted, and should be 136. and is Chambers's Case. It was agreed in both the Cases that such Rate is not good to bind the Inheritance; But it was said in the first Case that it is good by way of Direction How and How Much shall be levied.

19. Libel, in the Spiritual Court for not paying a Parish Rate for Repairs of the Church, and suggested for a Prohibition, that all Parish Rates were to be by Majority of Parishioners; and that every Rate, after it is collected, becomes void; and that this Rate was not by a Majority &c. and that the Suit was to pay this in Pursuance of an old Rate collected many Years before. Per Holt, here the Suggestion recites an ancient Rate, which they say was to be a Standing Order for all Times to come; And that they have confirmed that Rate, and that the Libel is for Want of a New Payment according to it, and cited Noy. * 131. † 126. in Point, for a Prohibition in this Case, and said, That all, that the Spiritual Court can do, is to make an Order that the Church be repaired but not to Assess a Quantum. A Prohibition was granted. 12. Mod. 327, 328. Mich. 11. W. 3. Blank v. Newcomb.

(I) Reparation [*Chapel of Ease.*]

1. **I**F there be a Parochial Church, and a Chapel of Ease in the same Parish, and the Chapel of Ease had Time whereof Memory all Spiritual Rites except Burial and this has used to be done in the Church Parochial, and because they who have used to go to the Chapel of Ease, have used Time out of Mind to repair a Part of the Wall of the Churchyard of the Parochial Church, and in consideration thereof, and because those who are of the Chapel of Ease have used Time out of Mind to repair the Chapel of Ease at their own Costs they have been Time out of Mind discharged of the Reparation of the Parochial Church. This is a good Prescription, and there if they are sued in the Spiritual Court to repair the Parochial Church, a Prohibition lies. *Cr. 15. Ja. B. R. between the Inhabitants the Parish of Stratford, and the Inhabitants of the Chapel of Ease of Luddington, Prohibition granted, and then was shewn a Precedent. P. 44 El. Rot. 417. between Marshall and Abley. Prohibition granted for the Chapel called Deusford against the Parish called Ringstead.*

See (H) pl. 7, 8.
Noy 41.
Church-warden of Denford's Case, and reports, that by the better Opinion of the Court the Prescription was not good; for the Ease of some shall not be a Dis-ease to the rest of the Parishioners; for Pop-

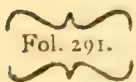
ham said, That the Assent is not requisite to build a Chapel of Ease; and then the Ordinary and the Parish cannot charge the Parishioners with greater Charge, yet now it was order'd that a Prohibition be granted, and that Defendants, if they please, might demur upon it. And cites 5 Jac. B. R. a Derbyshire Case, where a Prohibition in such Cases was denied.

Tho' a Man &c. Time out of Mind has repaired a Chapel, yet if it be not a *Predial Chapel*, having Chapel-Wardens belonging to it, 'tis no Reason to exempt him from a Church-Rate to repair; and if he repairs less than his Proportion, it may be a Question, If it ought to discharge him. Per Holt. *Farr. 122. Hill. 1 Ann. B. R. Anon.*

2. **I**F a Chapel of Ease has used a *Tempore &c.* to have all Sacraments except Burial, and the Inhabitants within the Chapel, alio always have repaired the Chapel, and prescribe in Consideration of 3 s. and 4 d. per Annum, paid for Reparation of the Mother Church to be discharged of the Reparation of the Mother Church. If the Inhabitants of the Chapel are sued for Reparation of the Mother Church a Prohibition lies upon this Modus. *P. 11. Car. B. R. between Pennelond and Toye Prohibition granted. Goosey was the Chapel, and Standford the Mother Church in the County of Berks. Cr. 11. Car. B. R. in the same Case the Prohibition confirmed, and ordered to be tried at the next Assises. But Mich. 11 Car. A Consultation was granted in this Case, because the Prohibition was granted after Sentence in the Spiritual Court that there was not any such Custom.*

3. The Inhabitants of a *Chapelry*, within a Parish were libelled against for not paying towards repairing the Parish Church. The Case, as appeared upon the Libel was, the Inhabitants of this Chapelry had never hitherto contributed, but had always buried in the Mother Church, till H. 8th's Time, when the Bishop consecrated a Burial-Place for them; in Consideration whereof they agreed to pay towards the Repairs of the Mother Church. It was held by Holt Ch J. That by the Common Law, the Parishioners of every Parish are bound to repair their Church; But by the Canon Law, the Parson is, and so it is in Foreign Countries. In London, the Parishioners repair both Church and Chancel, though the Freehold is in the Parson, and it is Part of his Glebe, for which he may bring an Ejectment. In the principal Case, those of a *Chapelry* may prescribe to be exempt from repairing the Mother Church, as where it buries or christens within itself, and has never contributed to the Mother Church; For in that Case it shall be intended *Co-eval*, and not a latter Erection in Ease of those of the Chapelry, but here it appears, That the Chapel could be only an Erection in Ease, and Favour of them and the Chapelry; For they of the Chapelry buried at the Mother Church till H. 8th's Time, and then undertook to contribute to the Repairs of the Mother-Church. 1 Salk. 164. pl. 2. Ball v. Cross.

(K)



(K) Jurisdiction. Reparation. Ornaments.

1. **I**F a Man be rated for the Ornaments of the Church according to his Land, which he has in the Parish, a Prohibition lies; Because he ought to be rated for them according to his Personal Estate. *M. 20. Ja. B. R.*

S. P. Win. 53. Mich. 20 Jac. Anon. For such Taxation for Ornaments is Personal only.

2. If a Man, who is not an Inhabitant in the Parish, but has Land there, is rated for the Ornaments of the Church according to the Land, a Prohibition lies; For the Inhabitants ought to be rated for them. *M. 20. Ja. B. R. per Curiam. Resolved, and Prohibition granted, this being moved by Master Delberton, who said that it had been divers Times so resolved.*

2 Roll. Rep. 262. Mich. 20 Jac. B. R. Wilmore's Case, and seems to be S. C. — S. P. by the Chief J. to which Chamberlayne J. agreed, and none denied it. Ibid. 270. Hill. 20 Jac. B. R. The Churchwardens of . . . — See the last Note to pl. 4.

Sec (H) pl. 10. contra. But then it must be alleged, That that Plea

3. If all the Parishioners are not rated for the Reparation of the Church, but some are and some are not, and those who are rated are sued in the Ecclesiastical Court, a Prohibition shall be granted. *M. 11. Ja. B. R. Per Curiam.*

was offer'd in the Ecclesiastical Court, because Reparation of Churches is proper for their Cognizance. Vent. 308. Pasch. 29 Car. 2. B. R. Anon.

Poph. 197. S. C. — The Parish of B. levied a Tax upon all the Lands in the Parish for New Casting their Bells, so much for every Acre, but they ex-

4. If the major Part of the Parishioners of a Parish, where there are 4 Bells, agree that there shall be a fifth Bell, and a 5th is made accordingly, and they make a Rate for Payment for it; This shall bind the lesser Part of the Parishioners, tho' they do not agree to it; For otherwise any obstinate Persons may hinder any thing intended, and which is fit for the Ornament of the Church. *Mich. 2 Car. B. R. between per Curiam. Prohibition denied, it being moved by Master Wilde. This concerns the Parishioners of Broms-*

grove in Worcestershire. accepted 900 Acres of Wood of the Bishop of London, pretending they were discharg'd by Custom. A Parishioner was sued, and Sentence given against him in Paul's, and the Sentence affirm'd upon Appeal, and now he prays a Prohibition. And Serj. Crew said, That this Custom was against Law; whereupon Doderidge and the Court said to him, That he should make his Suggestion, and then he should have a Prohibition.

Bells are only Church Ornaments, and are a personal Charge upon Inhabitants, and not upon those who live elsewhere, tho' they occupy Lands in that Parish. *3 Mod. 211. Pasch. 4 Jac. 2. B. R. Woodward's Case. — But 1 Salk. 164. Trin. 1 W. & M. B. R. S. C. by Name of Woodward v. Makepeace it was held per Cur. That tho' he does not personally live in the Parish, yet by having Lands in his Hands, he is taxable; and whereas it was pretended the Bells were but Ornaments, it was held, They were more than Mere Ornaments; That they were as necessary as the Steeple, which is of no Use without the Bells, and Holt C. J. said, If he be an Inhabitant as to the Church, which is confessed, how can he not be an Inhabitant as to the Ornaments of the Church?*

5. The Churchwardens libell'd for a Rate made to repair the Church, and for dividing the Church House (which did not belong to the Church) into several Rooms for the Use of the Poor, and for Payments of the Marshal's Money, and for making new Chimes. It was suggested for a Prohibition, that the Things mentioned in the Rate are jumbled together, and such as are not cognizable in the Spiritual Court, and that the Chimes are only Ornaments; But it was answered, That they are not only Ornaments but useful and convenient; And a Prohibition was denied per tot. Cur. *Lutw. 1019. Hill. 36 & 37. Car. 2. C. B. Watkins v. Seyman & Webb.*

See (H). 15 Marg.

6. Rate to pay for Ornaments in Proportion to the yearly Value of Racks and Mills is not good. *5 Mod. 391. Hill. 9. W. 3. Hawkins's Case.*

7. A Prohibition for libelling in the Spiritual Court for a Parish Rate for mending and cleansing the Parish *Organs*, was granted. 12 Mod. 416. Mich. 12 W. 3. B. R. Anon.

8. A Rate was made at a Vestry for *Building of a Gallery*; and for refusing to pay his Part, a Parishioner was su'd in the Spiritual Court, and thereupon he now pray'd a Prohibition, because a Parish could not be tax'd for the Building of a Gallery, which is neither Useful or Ornamental to a Church. But this was not much regarded by the Court. 10 Mod. 13. Mich. 9 Ann. B. R. Forte v. Buviere.

(L) *In what Cases it shall be granted for a Collateral Cause.*

1. **I**f a Suit be in the Spiritual Court to try the Bounds of a Parish, See (E) pl. 1. 3. —
a Prohibition shall be granted, for they shall not try it. Mich. * S. C. Roll.
 14 Ja. B. R. *Fisher and Chamberlayne*. Resolved. H. 41 Cl. B. R. Rep. 332.
 between *Piper and Barnaby*. Adjudg'd, and Prohibition granted. H. pl. 39. And
 13 Ja. B. R. between * *Foster and Hyde*. Adjudg'd. a Prohibition was

granted, because they would try the Bounds of a Parish; and the Plaintiff in the Prohibition shew'd for Title, That the Parsonage appropriate came to the Crown by the Statute of Dissolutions, and that *Queen Mary* granted it to a Corporation, who leas'd it to the Plaintiff for a certain Term, but did not shew the Letters Patents, nor the Deed of grant from the Corporation; and thereupon it was demurr'd for a Consultation, for this was resolv'd 10 Rep. in Dr. *Lepfield's* Case, not to be good. And Coke Ch. J. said, That they would have the Letters Patents and the Deed shewn to them A Latere; because for the Default of pleading them, a Consultation shall not be granted for the Spiritual Court to try the Limits of the Parish. And after they join'd Issue by Consent.

S. the Plaintiff sued in the Spiritual Court for Tithes against the Defendant within the Parish of C. The Defendant said, That the Tithes are within the Parish of A. and the Parson of A. came in Pro interesse suo, and thereupon they proceeded to Sentence, and that was given against S. who now su'd a Prohibition; and the Question was, If Within Such a Parish or Such a Parish be triable by the Law of the Land, or by the Law of the Church? Wray Ch. J. said, It hath been taken, That it is triable by our Law. *Fenner*, The Pope has not distinguished Parishes, but has ordained, That Tithes shall be paid within the Parish. 3 Le. 129. pl. 182. Trin. 28 Eliz. in B. R. *Stransham v. Collington*. — S. C. Cro. Eliz. 228. pl. 17. a Prohibition was granted; for the Bounds of the Parish are triable at Common Law.

The Bounds of Parishes, tho' coming in Question in a Spiritual Matter shall be tried in the Temporal Court. This is a Maxim in which all the Books of Common Law are unanimous, tho' our Provincial Constitutions expressly mention Limits Parochiarum, among the Matters, Quæ Mere ad Forum Ecclesiasticum pertinere noscuntur, and quæ non possunt ad Seculare Forum aliquatenus pertinere. 1 Gibf. Cod. 239.

The Reason why Bounds of Parishes are triable at Common Law, is because the Prescription is the Ground thereof; Per Hale Ch. J. And per tot. Cur. This is of Right, and not to be denied where grantable: 3 Keb. 286. Pasch. 26 Car. 2. B. R. in the Case of *Brown and Bard v. Palfry*.

But where Prohibition was pray'd, because the Bounds of 2 Villis in the Parish of A. came in Question, the Prohibition was deny'd by all the Court; for tho' the Bounds of a Parish are not triable, the Bounds of a Vill in the same Parish are triable in the Ecclesiastical Court. Lev. 78. Mich. 14 Car. 2. C. B. *Petler v. Yalman*.

2. If a Vicar of a Parish libells against another to avoid his Institution to the Church of D. which he supposes to be a Chapel of Ease appertaining to his Vicarage, and the Defendant suggests, That D. is a Parish by itself, and not a Chapel of Ease, a Prohibition shall be granted; for they shall not try the Bounds of the Parish. Mich. 14. Ja. B. R. *Fisher v. Chamberlaine*. Adjudg'd for the Church of *Oakely and Clapham*; and yet there he alleg'd it, Subdole libellando.

3. If the Question be in Court Christian, Whether a Church be a Parochial Church or but a Chapel of Ease, a Prohibition lies. Tr. 3 Ja. B. The Wardens of *St. Sampson's* Case of Cornwall. P. 9 Car. B. R. between *Elie Vicar of Alderburne* in the County of Wilts and *Cooke*. Prohibition granted, I being for the Vicar; and upon

this, Issue join'd, Whether they were several Parishes, and tried by Verdict to be one Parish.

4. If in a Parish there be a Chapel of Ease and a Vicar thereof distinct from the Parochial Church, and the Vicar is endow'd of the Tithes of the Parishioners who are inhabiting within the Chapel, and the Vicar sues one of the Parish who is not within the Chapel, and he says, That he is of the Parish and not of the Chapel, a Prohibition shall be granted; for now the Bounds of the Chapel come in Question. *H. 15 Ja. B. R. between the Vicar of the Chapel of Boston in Cornwall and another of the Parish of*

5. If the Churchwardens of a Parish sue a Vill for Reparation of their Church, supposing the Vill to be an Hamlet within their Parish, and the Vill [pleads] that it is a Parish of itself, and not an Hamlet of the other * Parish, a Prohibition shall be granted; for now the Bounds of the Parish come in Question. *Tr. 16 Ja. B. R. between Perry and Thomas Plaintiffs, against* Prohibition granted.

6. If a Suit be in the Consistory of Durham for Tithes of Land lying in Berwick, no Prohibition shall be granted upon a Surmise, That the Land lies in Amerton in the Kingdom of Scotland, and not in Berwick; for tho' this be true, yet it may be that the Parson ought to have the Tithes thereof. *Tr. 11 Car. B. R. between Morton and Rosdon. Per Curiam, After a Prohibition upon such Suggestion made, a Traverse taken, That it does not lie in Amerton in the Realm of Scotland, a Consultation granted; and it seems it was partly in respect to the said Realms of Scotland and England in Point of State.*

A Prohibition shall not be granted by a bare Surmise, that he is sued for Tithes by the Parson of D. of Lands in the Parish of S. unless it appears in the

Pleading in the Spiritual Court; for they there shall not be Judges of the Bounds of the Parish. By the Court. *Noy 147. Philips v. Slacke. cites 5 H. 5. 10. 22 E. 4. 24.*

7. If a Man who has Land by Descent sues another in the Ecclesiastical Court for calling him Bastard, a Prohibition shall be granted; for it tends to Temporal Disinheritance. *H. 3 Ja. B. R. Per Curiam.*

8. If a Man sues for a Legacy in the Spiritual Court against an Executor, and he there pleads, That he has not Assets but for Debts. If the Court disallows this Plea, a Prohibition shall be granted. *Walsch. 15 Ja. B. R. between Singleton and Wade. A Prohibition granted accordingly.*

If a Suit be in the Spiritual Court for a Matter whereof they have Jurisdiction, and

therein a Plea is pleaded which is triable at the Common Law, yet if they will allow the Plea, they shall have Jurisdiction thereof, and try it; otherwise a Prohibition lies. Agreed per Curiam. *Cro. E. 595. pl. 38. Mich. 39 & 40 Eliz. C. B. in the Case of Somerfet v. Markham.*

If Goods are devis'd to B. as Son and Heir of A. and B. sues the Executors in the Spiritual Court for the Goods, and the Executors say, That B. is not Son and Heir of A. and thereupon they are at Issue; It was held, That the Spiritual Court shall have Jurisdiction, because it is dependent on the first Matter; besides B. would otherwise be Remediless, for he cannot sue for the Goods so devis'd in the Temporal Court. *Kelw. 110. a. pl. 33. Casus incerti Temporis.*

So if Devisee of Goods sues for them in the Spiritual Court, and the Executor pleads *Ne Devisa pas*, this shall be try'd in the same Court; because the principal Thing is merely Spiritual, and this Issue depending upon the Principal, shall ensue the same Course, and be try'd in the same Court. *Kelw. 110. b. pl. 33. Casus incerti Temporis.*

So if A. devises Goods to B. and dies, and B. sues in the Spiritual Court for the Goods, and the Defendant says, That the Property of the Goods is his; this Property shall be tried in the Spiritual Court, and yet it is a Temporal Thing. *Kelw. 110. b. pl. 34. Casus incerti Temporis. Per Husley.*

So if the Parson sues in the Spiritual Court for a Mortuary, and the Issue is taken upon the Property; and so of all Issues, being upon the same Thing, they shall be tried by the Spiritual Court. *Kelw. 110. b. pl. 34. Per Husley.*

But if Testator devises Goods to B. and the Executors forge a new Will, in which there is no such Devise, the Action upon the Statute 1 H. 5. cap. 2. against the Executors, shall be in the King's Court, because the Suit is upon a Thing which merely concerns his Court. *Kelw. 110. b. pl. 33. Per Grantham. Per Casus incerti Temporis.*

In a Suit for a Legacy in the Spiritual Court they were at Issue there upon a Point of Covin, as touching Matter there alleged, in Discharge of a Legacy; Upon this a Prohibition was pray'd, and denied, and a Consultation granted, because they had Conscience of the Principal, and therefore they have Cause also there to determine of the Accessory, being Covin, concerning the Legacy; It was adjudg'd for the Consultation, and

and the Prohibition denied. 3 Bulst. 314. Mich. 1 Car. B. R. in the Case of Dickes and Uxor v. Browne. — cites Pasch. 14 Jac. B. R. Wallis v. Leyde.

An *Executor of an Executor* was *su'd*, who *pleaded Riens enter Maines*; The Spiritual Court refused that Plea; upon which a Prohibition was awarded out of B. R. Noy 77. Dixye v. Brown. — S. C. Paim. 422. Pasch. 1 Car. B. R. — S. C. and reported in almost the same Words. Lat. 114. by the Name of Watkins's Case — 3 Bulst. 314. Dickes v. Brown, S. C. But says, That the Prohibition was granted upon a Misopening the Suggestion to the Court. And per Cur. we do here try *Fully Administer'd* or Not, by a Jury; they there try this per Testes, and they have Conufance thereof; But if they, in their Proceedings, refuse such a Proof for Fully Administred in Discharge of the Party, which is allowable at Common Law, a Prohibition then is to be granted; But here nothing is in this Suggestion, but that they there went to Issue only upon Fully Administred or Not, the which of itself is no Cause to have a Prohibition. — If they *refuse to accept of the Plea of Plene Administavit*, the Party ought to *appeal*, because they proceed otherwise than they ought. Sid. 249. Trin. 17 Car. 2. Anon.

9. Libel for not repairing Part of the Church-Wall, which by *Custom* he was bound to do. A Prohibition was granted *after Sentence*; because a Custom is not triable in that Court. Carth. 33. Pasch. 1 W. & M. B. R. Tyler v. Mansel.

(M) In what Cases they shall *not have Jurisdiction* for a Collateral Cause.

1. **I**F A. be presented by J. S. to a Benefice, [and is] admitted, instituted, and inducted, and after the King presents his Clerk to the same Church, supposing A. to be presented by Simony, and his Clerk is instituted and inducted. Upon which A. sues in the Ecclesiastical Court against the Clerk of the King, supposing that he did not come in by Simony, and so prays, That the Super-Admission, Institution, and Induction of him be repeal'd, a Prohibition shall be granted for the Clerk of the King upon his Suggestion, That A. was presented by Simony. For now the only Question between them is Whether the Church was void or not at the Time of the Presentment of the King, which is triable only by the Temporal Court. Tr. 16 Ja. B. R. between Sarison and Batboe. Resolved per Curiam, and a Prohibition granted, but after the Prohibition was stay'd. But Hill. 16 Ja. B. R. the Prohibition was granted, tho' it was said, That they only question'd the Institution in the Ecclesiastical Court; for this is not to be allow'd after Induction.

2. The Patron of a Benefice may be sued in the Ecclesiastical Court for presenting of his Clerk (who is now inducted) for Simony; for the Statute of Simony doth not take away the Ecclesiastical Jurisdiction to punish the Party Pro salute Animæ. D. 11 Ja. B. R. Sir William Boier's Case. Resolv'd.

2 Bulst. 182.
S. C. Hill. 11
Jac. And
there Coke
Ch. J. said,
That we are
not to take

Notice of any Simony, this being punishable in the Spiritual Court, and if they meddle only Pro salute Animæ, they are not to be prohibited; nor is a Prohibition to be granted in this Case, by reason that they examined upon Oath touching the Simony; and this is clear, because it was so done voluntarily; and notwithstanding the Incumbent be dead, yet the Crime remains and is living, and the Examination here by them was only Pro Salute Animæ. But if there be any Article to be examined upon, which any ways draws the * Right and Title of the Benefice into Question, then clearly a Prohibition is to be granted, but not otherwise; And so no Prohibition was granted. — * S. P. Bulst. 179. 9 Jac. in Holt's Case. — S. P. 2 Le. 168. pl. 205. Pasch. 26 Eliz. C. B. in Gerard's Case. — 3 Le. 98. pl. 140. S. C.

3. If A. recovers in Quare Impedit against the Ordinary and the Incumbent, and the Incumbent brings Writ of Error, in which the Judgment is affirm'd, and a Writ to the Bishop is granted for A. upon which A. presents his Clerk to the Bishop before any actual Remotion of the first Incumbent, and his Clerk is admitted and instituted, upon which the first Incumbent appeals to the Audiente for a Super-Institution

Roll. Rep.
62. S. C. ac-
cordingly. —
P. an In-
cumbent of a
Church tra-
vell'd to
Achaia and

other Parts of tion before that he was removed, a Prohibition shall be granted; for Greece, and the first Incumbent was removed in Law by the Judgment, tho' he continued Incumbent de Facto till the last Incumbent was presented; and this last Institution was by Force of the King's Writ, and therefore no Appeal may be from it. *It was not known whether he was alive or dead; whereupon* and Singleton. Adjudg'd, and Prohibition granted. *G. was instituted and inducted. Afterwards the Procurators of P. libel'd against G. in the Ecclesiastical Court to try the Super-Institution. It was suggested for a Prohibition, That after Induction the Ecclesiastical Court cannot try the Super-Institution, and that G. was now in his first Fruits, and that therefore the Court may grant a Prohibition; And it was granted. Litt. Rep. 140. Mich. 4 Car. in the Exchequer. Pettie's Case.*

Prohibition.
The Plaintiff declared,

* Fol. 293.

That Pleas of Advowsons belong to the Common Law, and not to the Spiritual Court; and that he was instituted to the Church

of D. and the Defendant libel'd in the Spiritual Court, *That he himself was instituted to the said Church, and inducted before the Plaintiff, who had obtained a Super-Institution upon him; which being scandalous to his Title, he su'd there to set the Super-Institution aside, But the Spiritual Court proceeded notwithstanding, and tho' the Induction belong to the Common Law; The Defendant pleaded, That he did not prosecute Contra Prohibitionem, but Pro Consultatione habenda he demurr'd; And per Cur. He ought to have it; for tho' the Defendant was inducted, yet it doth not appear that the Plaintiff was inducted, and so the Plea stands only upon the Super-Institution, which is proper for the Spiritual Court; But afterwards it being shewn to the Court, that the Plaintiff was inducted also, the Consultation was stay'd, that the Plaintiff might declare De novo upon his Institution and Inducted. But upon the present Declaration the Prohibition cannot stand. 2 Lev. 125. Hill. 26 & 27 Car. 2. B. R. Monday v. Porton.*

† Where the first Incumbent comes in by *Simony*, there can be no Super-Institution; for in such Case the Church is void de Jure & de Facto, and they cannot meddle with the Institution; but with the Simony they may. Per Cur. Litt. Rep. 176. Mich. 4 Car. C. B. in the Case of Stevens v. Cripps.—And per Williams J. Matter of Induction and the Validity thereof is determinable at Common Law, and not in their Court; and the whole Court agreed with him, and a Prohibition was granted. Bullst. 179. 9 Jac. Holt's Case.

* Where the Spiritual Court would by any Article draw the Right and Title of the Benefice into Question, a Prohibition is to be granted. 2 Bullst. 183. in Sir William Boier's Case.—And see the Notes upon pl. 4.

5. If the Parson of B. takes a second Benefice within the Statute without Dispensation, by which the first Benefice is void, which is of the Patronage of the King, and after Ad Uberiorem Cautelam & ad tollendum omne Dubium, he obtains a new Presentment of the King, and upon this requires the Bishop to admit, and super-institute him, the Bishop takes Time to be advised, and in the mean Time the King presents another, who is instituted and inducted. And after the first Parson sues the Bishop for Injustice in the Spiritual Court; a Prohibition shall be granted; for those of the Spiritual Court ought not to examine the * Right of Presentations. *B. 3 Ja. Williams Case adjudged, and Consultation denied.*

6. If a Man sues in the Court Christian to have Account for the Profits of a Benefice, a Prohibition lies, because this belongs to the Common Law. *B. 3 Ja. B. adjudged.*

7. But if the Suit be there for the Profits taken in Time of Sequestration, no Prohibition lies. *B. 3 Ja. B. adjudged.*

8. If

8. If two Churches are united by Patron, Ordinary, and the King, by the Statute of 37 H. 8. upon a Surmise that the 2 Churches are not distant more than a Mile the one from the other, and after the Parishioners are sued in the Spiritual Court to come to the one Church, a Prohibition lies upon a Surmise, that the Churches are distant more than a Mile the one from the other. Mich. 10 Car. B. R. between *Dolson and Sir Robert Mordaunt*, a Rule for a Prohibition granted; the Churches united were *Wellesborough and Walten Dorell* in the County of Warwick. But after 12. 11 Car. B. R. The Prohibition denied, because there was not any Suit depending against the Parishioners, nor any other Suit in the Spiritual Court to be prohibited.

9. If the Parson libels in the Spiritual Court for a Modus Decimandi, if the Defendant suggests that he has mistaken the Modus, and shews another Modus, he shall have a Prohibition, because they shall not try the Modus by which his Inheritance shall be bound. And an Usage for 10 Years is good Custom by the Spiritual Law; and if this shall be suffered, they will defeat the Temporal Court of all Jurisdiction. Hy Reports. 14 Ja. *Goslin and Harden* adjudged.

See (F) pl. 17. (Q) pl. 14 15. S. C. Roll. Rep. 419. according-ly. And Mountague Ch. J. said that the Spi-

ritual Court never had Jurisdiction of the Matter, by Reason of their having mistaken the Modus — S. C. 3 Bull. 241

A Parson libell'd for the 10th Shock, and alleg'd it to be the Custom Time out of Mind, to set the Corn out in that Manner. The Parishioner suggested that the Custom was to set out the 10th Sheaf and not the 10th Shock; and that tho' he had alleg'd this, they had refus'd the Plea. A Prohibition was granted, and afterwards a Consultation was denied. The Court agreed that a Modus Decimandi was usable for in the Spiritual Court, but when it is denied they ought to surcease. Whitlock J. said, that here is no Title made for a Consultation, but yet he thought it good enough in this Case, because the Right of the Tithes is not denied, but the Manner of setting forth; that they vary not upon the *Modo Decimandi*, but upon the *Modo Expendendi*; but the other Justices said nothing to this Point. Palm. 440. Pasch. 2 Car. B. R. Steward's Case.

10. If a Man presents to the Bishop, and upon Refusal sues to the Archbishop, who after Mention, Citation and Default of the Bishop, admits and institutes the Incumbent, upon which he is also inducted, and after the Bishop sues his Double Quarrel, appealing from the said Sentence to the Delegates, to annul the Admission and Institution, A Prohibition shall be granted, because after Induction the Admission and Institution ought not to be drawn in Question in the Spiritual Court. B. 12 Ja. B. between *Sir Timothy Hutton and the Bishop of Chester*. Per Curiam.

Mo 861. pl. 1182. S. C. accordingly, by the Name of Rowth v. the Bishop of Chester, and says, That if the Justices see Cause, they may write to

the Bishop to certify concerning the Institution. — S. C. accordingly. Hob. 15. where the Suggestion to avoid the Institution was, that it was made without Warrant, it being made by the Archbishop at London, he being there in Parliament-time, and so being made out of the Diocesis was a Nullity. But it was held, That the Induction being a Temporal Act, was not to be avoided but by a Quare Impedit, or the like at Common Law. And tho' the King signified his Pleasure by several to have a Consultation granted, yet they answered that they could not do it by the Law, and so after many Messages the Matter stood.

11. If upon a Resignation of the Incumbent, another be presented and instituted, and after he who resign'd libels in the Ecclesiastical Court against the new Incumbent, pretending that he did not resign, and after makes a Lease upon which Issue is joined, whether he was Parson at the Time of the Lease made to try the Title, yet no Prohibition shall be granted, because the Question there is * only upon the Resignation, which properly appertains to the Ecclesiastical Court. Mich. 10 Ja. B. *Mankio's Case*. Per Curiam.

* Fol. 294.

12. If a Man pending a Quare Impedit libels in the Spiritual Court to avoid the Institution of the Clerk of the same Church after he is inducted, a Prohibition shall be granted; for otherwise they will prevent the Quare Impedit. Mich. 14 Ja. B. R. between *Fisher and Chamber-*

See pl. 10. — The Defendant in the Quare Impedit was

instituted and inducted pending the Action. *Chamberlain*, so held by *Dodderidge*; and he said that this had been so adjudged diverse Times in Bank. The Plaintiff in the *Quare Impedit* sued in the Spiritual Court to remove him; but upon Suggestion that the Defendant was inducted, a Prohibition was granted. Lat 205. *Oliver v. Husley*.—Pending a *Jure Patronatus*, the Bishop admitted one of the Presentees; whereupon the Patron of the other Presentee libell'd in the Spiritual Court; but a Prohibition was granted, and a Consultation afterwards denied. 2 Le. 163. pl. 205. Pasch. 26 Eliz. C. B. Gerard's Case.——3 Le. 98. pl. 140. S. C.

S. P. But if the Suit to repeal the Institution had been before the Induction, no Prohibition should be granted. Sid. 293. Trin. 18 Car. 2. B. R. in Case of *Offley v. Best* —— * S. P. For if the Institution was not good, the Induction is not good. Hob. 15. in *Hutton's Case*.

The Induction is Temporal, and the Spiritual Court cannot frustrate it; and tho' they should give Sentence against the Induction, yet it remains good. Per *Richardson*, quod fuit concessum. And per Cur. They cannot meddle with the Institution after Induction. And by 3 J. A Prohibition may be granted, tho' no Suit was depending here, and tho' the Induction was utterly void, [as in Case of *Simony*, as the principal Case was] as well as where a Church was lawfully full before. And Prohibition was granted *Nisi Causa*. Litt. Rep. 165. Mich. 4 Car. C. B. *Stevens v. Cripps*.

S. P. Litt. Rep. 165. per Cur. in Case of *Stevens v. Cripps*.

14. If I present my Clerk, and he is admitted and instituted, and before Induction a Caveat is enter'd by a Stranger in the Spiritual Court, that he shall not be inducted, and thereupon an Inhibition is granted to the Archdeacon, that he shall not induct him. In this Case a Prohibition shall be granted, because when he is instituted he has an Inception to the Lay Fee, and the Church is full against all, except the King; and if this shall be suffered, all Trials by *Quare Impedit* shall be ousted. D. 14 Ja. B. R. Prohibition granted.

If the King collates, or recovers the Collation to any Prebend, and his Clerk is admitted, and afterwards the Clerk who is vex'd sues in the Spiritual Court by

15. If a Bishop collates, pretending a Lapse, and thereupon the Patron presents, and in a *Quare Impedit* recovers, and has a Writ to the Bishop, and before his Presentee has Institution sealed, the Archbishop sends an Inhibition that he shall not be instituted, and thereupon Sentence is given in the Arches that he shall not be instituted, a Prohibition shall be granted upon this; for they shall not try again that which is before tried at Common Law, and draw in Question the Recovery; for otherwise Recoveries at Common Law would be of little Force. D. 4 Ja. B. R. between *Fletcher and Baker*. Per Curiam.

Appeal &c. by which the Title of the Collation may come in Debate, the King shall have a Prohibition. And if the King recovers his Collation or Presentation to any Church, and after Execution is disturb'd by Appeals &c. Or if the King's Clerk after Induction is vex'd by Appeals &c. then the King shall have a Writ directed to all Sheriffs &c. to take and arrest the Bodies of those who make such Impediments to disturb the Execution of the Judgment, or of such Presentations or Collations made by the King; and also shall have a Prohibition to the Bishops &c. And also the King may sue such Prohibition to the Party himself who sues such Appeals &c. that they do not sue such, or permit such Appeals &c. to be. F. N. B. 42 (M) 43 (N.)

If the King recovers his Presentment to a Church, and has a Writ to the Bishop &c. to remove the others Incumbent, for which the Incumbent sues an Appeal in the Archbishop's Court &c. by Reason whereof the Archbishop sends a Prohibition that he do not admit the King's Clerk pending the Appeal &c. the King shall have a Writ to the Archbishop and his Officers to take off his Inhibition, and that they do nothing, nor suffer any Thing to be done in Derogation of the King's Right, and shall have another Writ against the Incumbent, that he follow not such Appeals &c. And also the King may have an Attachment directed unto the Sheriff against such Incumbent, if he go on there after such Prohibition directed unto him. F. N. B. 43. (A.)

And it appears by the Register, that another common Person who recovers his Presentment, or has Title to present, shall have such Writs of Prohibition unto the Spiritual Judges, or the Party, that they shall not proceed, or pursue such Appeals &c. and also Attachment against them if they do &c. F. N. B. 43. (B.)

And if the *King* recovers his Presentment, and has a Writ unto the Bishop, and his Clerk is instituted and inducted, if the Bishop, at the Suit of others, hath Provocations or other Instruments to cite the King's Incumbent to the Court of Rome &c. the King shall have a Prohibition to the Bishop, and an Attachment upon it, if &c. And it seems that the King shall have a Prohibition *without any Recovery* had before, if his Presentee be instituted &c. And so it seems a common Person shall have and sue such a Prohibition, when the Suit is to try the Title of the Presentment or Collation, yet the Writs in the Register are and speak of a Recovery. F. N. B. 43. (C)

16. If a Patron presents A. his Clerk to his Church, and the Bishop delays him for Examination for more than two Months, whereas by the late Canons he ought not to delay him for more than a Month, whereupon A. fearing that Lapse will incur sues a Duplex Querela, in the Court of Audience, thereby to inhibit the Bishop to present, and after the 6 Months the Court of Audience gives Judgment for him, and after the Bishop, notwithstanding this, collates by Lapse; and thereupon in the Court of B. R. pray'd a Prohibition to the Court of Audience. The Prohibition shall be granted; for now if it be a Lapse, the Ecclesiastical Law will not remove him, the Church being full. And if the Bishop be a Disturber, then his Clerk shall be removed, notwithstanding the Penalty by 6 Months before the Writ purchas'd; for Collation without Title does not make an Usurpation; and therefore Quacunque via data, it does not appertain to the Ecclesiastical Law to proceed in the Duplex Querela. Tr. 3 Ja. B. R. between Palmer and Smith, Prohibition granted, and Consultation denied.

17. The Defendant suggested for a Prohibition to a Libel for Defamation in the Arches, that he is an Inhabitant within the Diocese of London, and so the Prosecution is *contra formam Statuti* 23 H. 8. cap. 9. it was argued against the Prohibition, that it ought not to go, because there had been a Composition between the Bishop of London and the Archbishop for this Jurisdiction; and for that Reason the Archbishop doth not visit in the Diocese of London, and that so is Gobbert's Case Cro. Car. 339. But per Keeling J. the Diocese of London is not within the Jurisdiction of the Arches, but the Archbishop hath a peculiar Jurisdiction there, consisting of 14 Parishes. And Twilden J. said that the Composition between the Ordinaries cannot prejudice the People for whose Benefit that Statute was made; and the Reason in Gobbert's Case is not good; for the Bishop of London cannot agree that the Archbishop shall not visit. The Court was divided. Raym. 91. Hill. 15 & 16 Car. 2. B. R. Ford v. Welden.

18. A Citizen of Bristol had a Country House, and frequently received the Sacrament in the Parish Church in the Country, likewise he received it frequently in the Cathedral Church in Bristol, but not in his own Parish Church in Bristol; for which Cause he was cited into the Ecclesiastical Court, and admonished; and afterwards for not obeying and receiving in his Parish Church, according to the Monition, he was excommunicated, tho' one of the Surrogates of the Court but the Sunday before had with his own Hand given him the Sacrament; and tho' he there pleaded this, and likewise his receiving in the Country at his own Parish there, they would not allow it; upon this Matter appearing to the Court, a Prohibition was awarded. Skin. 101. Hill. 35 Car. 2. B. R. Anon.

19. A Woman was libell'd against in the Spiritual Court for *Incontinency with a Man since dead*. It was suggested for a Prohibition, that the Man was her Husband: And now the Spiritual Court could not examine whether he had been her Husband or not, because that would tend to bastardize the Children, and dissolve the Marriage after Death of Party. Holt said, If there were a *Marriage de facto*, tho' illegal, yet they shall not libel to avoid it after Husband's Death; but if there was none, the Death of the Man ought not to protect her from a Prosecution for her Whoredom. 12 Mod. 419. Mich. 12 W. 3. Anon.

So where A. marries B. and after turns her off, and takes L. to Wife, by whom he has Issue, and dies; after his Death, the former sues the 2d Wife to avoid the Marriage, and held it could not be, because the Husband was dead. Per Holt Ch. J. 12 Mod. 432. in the Case of Hemming v. Price. — cites Ed 4. Fitz. Consultation, pl. 5.

Vent. 3. Mich. 20. Car. 2. B. R. The Bishop of Lincoln v. Smith. 21. A Libel was by a Bishop for a Pension. It was suggested for a Prohibition, That he sued before his own Commissary, and so would be Judge in his own Cause: But a Prohibition was denied; For per Holt Ch. J. and Eyre J. a Suit lies before a Chancellor in such Case, like the Case in Dyer, where the Lord sued before his Steward. Comb. 131. 1 W. & M. B. R. Anon.

* As to Defamations determinable in the Spiritual Court, it was resolv'd, That such

(N) What shall be said a * Defamation Spiritual to maintain a Suit in the Ecclesiastical Court.

Defamation ought to have 3 Incidents. 1st,

† Fol. 295.

That it concern Matter

merely of Ecclesiastical Cognizance; as for calling the Plaintiff Heretick, Adulterer, Schismatic &c. 2dly, It must concern Matter merely Spiritual only; for if it relates to any Thing determinable at Common Law, the Ecclesiastical Judge shall not have Cognizance thereof. 3dly, Tho' the Defamation be merely and only Spiritual, yet the Person defam'd cannot sue there for Amends or Damages, but the Suit ought to be only to punish the Sin & Pro salute Animæ. 4 Rep. 20. pl. 1. Trin. 25 Eliz. B. R. Palmer v. Thorpe. — S. P. 2 Inst. 492, 493. — F. N. B. 51. (I) in the new Notes there. (a) cites 22 E. 4. 10. & 2 E. 4. 10. that the Offence in this Case ought to be merely Spiritual.

Roll. Rep. 407. pl. 44. S. C. says, That a Prohibition was granted, and afterwards a Consultation, for the Reasons here

mentioned. — Mo. 906. pl. 1263. Trin. 29 Eliz. Worrice v. Smith, a Prohibition was granted to a Libel for calling one Witch; And afterwards a Consultation, because an Action does not lie for it at Common Law, unless where Death ensues. But the Book says Quære now since the Statute of 1 Jac. for it has been adjudg'd, That an Action upon the Case lies since that Statute. — 4 Le. 92. pl. 190. S. C. where the Words are *Veneficam, Sortilegam & Incantatricem Dæmoniorum*. And after a Prohibition a Consultation was awarded; And it was held there, That to call one Witch Generally an Action lies not in our Law, as has been adjudg'd. But to say, *She hath bewitch'd such a one*, an Action lies. And per Wray, Witchcraft, which is made Felony by any Statute, is not punishable by the Ecclesiastical Law; but in Case of Slander upon such a Witchcraft, such slanderous Words are of Ecclesiastical Jurisdiction; And for Witchcraft, which is not Felony, the Ecclesiastical Court shall punish the Party; And afterwards, in the principal Case, a Consultation was awarded.

Error of a Judgment in C. B. in an Action for Words (viz.) *She is a Bawd, and has bewitch'd him by Witchcraft and Sorcery*. It was held by Jones & Croke J. that the Action well lies for the last Words, (And has bewitch'd him &c.) but for the first Words 'twas doubted; wherefore cæteris Absentibus a Rule was given, That Judgment should be affirm'd. Cro. C. 261. pl. 5. Trin. 8 Car. Hix v. Hollingshed.

This was held to be

3. If a Man libel in the Ecclesiastical Court against another for saying certain Words of him, which would maintain an Action of the Case

Cafe at Common Law, a Prohibition lies. D. 4. Ja. B. R. *Turnain and Thorn*, per Cur. M. 38, 39. El. B. R. between *Butler and Bartlet* adjudged.

no certain Rule, and instance'd in that of laying violent

Hands on a Parson, and of a Pension by Prescription &c. 3 Lev. 17. *Cranden v. Walden*

Jones J. thought these Differences ought to be observed, viz. *If* here a Man calls a Woman Whore, or such like Slander, for which a Suit lies in the Ecclesiastical Court against the Party, (if the Thing be true;) there no Prohibition shall be granted; *but* where no Suit lies for the Principal in the Spiritual Court, but the Slander is punishable at Common Law, as for calling a Man Thief, Traitor &c. there if the Suit is in the Spiritual Court, a Prohibition lies. But if the Slander be such as hinders her Marriage, she may sue either in the Spiritual Court or at Common Law. So if Words are spoke, which are only Words of Reproach, Action lies not at Law, neither do they concern any Thing whereof the Spiritual Court has Cognizance, therefore for such a Prohibition lies, as Knave, Drunkard &c. *Quare de ceo*. The Chief J. agreed to this, but the other Justices said nothing. Jo. 246. pl. 5. Trin. 7 Car. B. R. Anon.

4. So if only the Words which are proper for the Jurisdiction of the Ecclesiastical Court are put in the Libel, and which would not maintain an Action at Common Law by themselves, yet upon Suggestion to the Temporal Court of the Residue of the Words, by which they would maintain an Action at Common Law, a Prohibition lies. M. 38, 39. El. between *Butler and Bartlet* adjudged.

The Words must be taken together and shall not be split. Per Holt. Farr. 81.

5. If a Parson of a Church calls A. Drunkard, upon which A. answers, Thou liest; if the Parson sues A. in the Ecclesiastical Court for giving him the Lie, a Prohibition lies; because the Reason why he gave him the Lie was not Spiritual, but depending upon a Temporal Thing precedent. M. 7. Ja. B. between *Simpson and Waters*. per Cur.

2 Brownl. 222. S. C. in an Action brought at Common Law against the Parson for Slander,

where the Words spoke by him are, viz. Thou art drunk, and I never held up my Hand at the Bar as thou hast done. — Libel was for saying, *You lie like a knavish Parson, and you have't me to swear and forswear*. A Prohibition was deny'd; for they are Irreverend Words, and the Spiritual Court only can punish them Pro Reformatione Morum. Litt Rep. 217. Mich. 4 Car. C. B. *Proctor v. Barley*.

6. If a Clergyman be a Bailiff of the Manor of J. S. and he oppresses the Tenants of the Manor, and one of the Tenants says to him, Thou art a Knave, and siter to wear a White Cloak than a Black; if the Clergyman sues him for these Words in Court Christian, a Prohibition shall be granted. B. R. adjudged, cited M. 7. Ja. B.

One said to a Clerk, a Spiritual Person, *Thou art a Black*; and a *Fet*; and for those Word the

Clerk su'd him in the Spiritual Court, but a Prohibition was awarded. A. g. Godb. 447. pl. 514. in the Cafe of *Hyde v. Dr. Wells*. — cites Trin. 42 Eliz. *Lovegrove v. Brewens*.

7. If a Man says of J. S. he is a Railer and Sower of Sedition among his Neighbours, he cannot be sued for these Words in the Ecclesiastical Court, because they are not in any respect Spiritual, nor trench to any Spiritual Defamation, but are merely temporal. Mich. 16 Ja. B. *Pannel and Smith* resolved, and a Prohibition granted.

S. C. Hob 246 pl. 313. *Smith v. Pannel*. For the Cause belongs to the Lect, except

it were in the Church, or the like. Het. 132. S. C. & P. or unless it were any ways tending to the Ecclesiastical Rites.

8. If a Man calls a Minister Knave, he may be sued for this in the Ecclesiastical Court, and no Prohibition shall be granted. D. 7 Ja. B. per Coke.

But Mich. 2 Car 2 B. R. A Prohibition Nisi &c. was

granted to a Libel for calling a Parson Knave. Sid. 393. pl. 26. Mich. 25 Car 2. B. R. Anon. — Vent. 2. Anon. seems to be S. C. and the Prohibition was granted, because it did not appear to relate to any Thing concerning his Function. — S. P. 12 Mod. 174. Mich. 8 W. 3. *Nelson v. Hawkins* (Dean of Chichester). — And Twissden J. said, That it was adjudg'd about 41 Eliz. That a Prohibition should be granted to a Libel for saying, *Sir Priest, you are a Knave* Sid. 393. pl. 26. — S. C. cited Vent. 2. in S. C. — So where the Prior of L. libelled against R. and L. for calling the Prior *Churlish*, *raucous*, *Crab*, and *cranker'd Churl*, a Prohibition was granted; for the Words concern'd no Spiritual Matter, and therefore he could not sue for them in the Ecclesiastical Court, neither could he have any Action for them at the Common Law. 2 Inst. 493

As a Prohibition was granted to a Suit by a Parson for calling him *Fool, Ass, and Goose*, for they are merely Words of Heat, and *do not touch him in his Profession.* 2 Lev. 49. Pasch. 24 Car. 2. B. R. Newman v. Kingerby. — 3 Keb. 28. pl. 49. S. C.

But where the Words (spoken of a Clergyman were (viz.) *Thou art, or you are, a pitiful pimping Rascal.* It was suggested for a Prohibition, That the Words were spoken in Passion, he being provoked by the Parson, who said, He was a Beggar, and was going to run his Country, and was used to steal his Neighbours Ducks &c. and that he had alleg'd this Matter in the Spiritual Court, but it was refused. A Consultation was granted upon Debate. Lutw. 1053. Pasch. 10 W. 3. Osborne v. Poole.

So where a Motion was for a Prohibition to the Spiritual Court, the

9. If a Man says, That he will not hear Sermons made by those who are made Ministers by Bishops, he may be sued for this in Court Christian, and no Prohibition shall be granted. H. 7 Ja. V. per Cur. adjudged.

Plaintiff being prosecuted there, for saying, *He would not be of the Communion of the Church of England upon any Consideration, for he believed if he was he should be damn'd*; And the Reason offered for the Prohibition was, Because the Libel was for a Contempt against the *Common-Prayer Book*, whereas this was not such an Offence. The Court was of Opinion, That tho' 'tis not an Offence against the *Common-Prayer Book*, yet 'tis certainly of Spiritual Cognizance, therefore the Prohibition was denied. 8 Mod. 338. Mich. 11 Geo. 1725. Sweetnam v. Archer.

A Libel was for these Words, *She will turn Tail to Tail with any Man*, intimating that she would be naught with any Man. But a Prohibition was granted, because they are idle Words, and not punishable in the Spiritual Court. Het. 167. Pasch. 7 Car. C. B. Crompton v. Waterford. — Litt. Rep. 365. Anon. but is S. C. and reported exactly the same, only that the one is in French and the other in English.

10. If a Man says of a Feme Covert, She will be a meddling with a Thing, he may be sued for it in the Ecclesiastical Court, and no Prohibition shall be granted, because this is a Spiritual Defamation. H. 9 Ja. V. Per Cur. Prohibition denied.

It is not an Offence punishable at Common Law, but only by the Custom of London, and so the Action should have been in the Spiritual Court. Cro. El. 643. Anon. — These Words are actionable, because the Party may be indicted for it. Per Cur. Palm. 379. Trin. 21 Jac. B. R. in an Anonymous Case.

11. If a Man says of another, That he keeps a Bawdy-House, and is sued for this in the Spiritual Court, tho' he may have Action at Common Law, yet the Spiritual Law has a Concurrent Jurisdiction therein, and the Words are mixed, and therefore no Prohibition lies. 27 H. 8. 14. b. per Fitzherbert.

D. sued T. in the Spiritual Court, because tho' she was of good Fame, and kept a Victualling-House in good Order, yet the said T. had published, That D. kept an House of Bawdry. T. now brought a Prohibition, and well; Per Cur. For D. might have had an Action for that at the Common Law; especially where she kept a Victualling House as her Trade. And the Justices said, That the Keeping a Brothel-House is inquirable in the Leet, and so a Temporal Offence; And so was the Opinion of the Court T. 7 Car. B. R. Mrs. Holland's Case. Noy 117. Thorne v. Alice Durham.

Libel was in the Spiritual Court for calling a Woman *Whore*; and saying, *That she kept a Bawdy-House*, and after Sentence Prohibition was moved for; and urged contra, That they should have alleged below, That the Words were spoke at one and the same Time, and then they might be prohibited; but now that they have Jurisdiction below for calling a Woman *Whore*, and that was all they gave Sentence for, they would not grant a Prohibition. 12 Mod. 236. Mich. 10 W. 3. Anon

12. If a Man says of another that he is the Pander of J. S. he may be * sued in the Ecclesiastical Court; because the Signification of this Word is well known, and it sounds to a Spiritual Defamation. H. 2. Car. Lewes & Whitley, per Dodderidge and Jones contra Whitley lock.

* Fol. 296.
S. C. Noy 85. — S. C. 2. Car. Lewes & Whitley, per Dodderidge and Jones contra Whitley lock.
Lat 155. — S. C. cited Mar. 66. in pl. 103.

Jo 246. S. P. Anon but seems to be S. C. Trin. 7 Car. B. R. And there

13. If a Man says to another, Thou art a Bawd, a filthy Bawd, and a Common Bawd, and for this he is sued in Court Christian, no Prohibition lies, because he cannot be indicted for this, if it be true, because he did not say, That he kept a Bawdy-House, which would be presentable in a Leet. Mich. 7 Car. between Holbushed and Hicks. Per

Per Cur. Consultation granted after Prohibition.

8 Car. B. R. between *Nates and Glover*. Prohibition was denied where it was said, he was a Bawd, and would die so.

Mich. by Jones J. for calling one Bawd, Suit lies either in the

Spiritual Court or at Common Law, and Prohibition does not lie, for she has an Election to sue in either and took a Diversity between such Words and Words of Reproach, as Knave, Drunkard &c. To which the Ch. J. agreed, but the others said nothing.

Libel was for saying, *Thou art a Bawd, and there were two Couple upon one Bed in thy House*. The Court said, That the Words, *Thou art a Bawd*, is a Thing Spiritual, and therefore no Prohibition shall be granted thereupon. Palm. 379. Trin. 21 Jac. B. R. Anon.

Libel was for saying, *Thou art an Old Bawd*; and thereupon a Prohibition was granted. But it was moved for a Consultation, for that it had been adjudg'd 15 Jac. That for saying, *Thou art a Bawd*, no Action lay at Common Law; but otherwise, if he had said, *Thou keepest a Bawdy-House*. Whereupon a Consultation was granted. Palm. 521. Hill. 3 Car. B. R. Roberts v. Brown. — The same Diversity was taken per Cur. Palm. 379. Trin. 21 Car. B. R. in an Anonymous Case. — Same Difference Cro. C. 229. Mich. 7 Car. B. R. in *Holmhead's Case*; where the Words were, *Thou art a Bawd, and I will prove thee a Bawd*; and because no Action lay at Common Law, a Prohibition was deny'd.

A Prohibition was moved for to the Spiritual Court upon a Libel there for calling the Plaintiff a *Bawd*. But the Court, after Argument and Time taken to consider thereof, resolv'd, That a Prohibition did not lie, because the Word is not actionable at Common Law. Mich. 12 Geo. 2. B. R. Locky v. Dangerfield. — And denied the Case in Raym. 115. Ward v. Marsh. — A Prohibition was denied for the Words, *Thou art a * Bawd*, notwithstanding it was objected, That the Words were spoken at Westminster, and that the City of Westminster is an ancient City, and that there is an ancient Custom within the said City that Whores shall be punished by Imprisonment; and also that an Action had been brought for these Words in the Marshall's Court, and Judgment for the Plaintiff. 10 Mod. 384. Hill. 3 Geo. 1. B. R. Savil v. Kirby.

* S. P. 2 Salk 552. pl. 15. Mich. 1 Ann. B. R. in the Case of Galizard v. Rigault

14. If a Woman sues another for saying to her these Words, *Thou art a Queane*, a Prohibition lies; because it is not well known what is intended by the Word Queane, and it is but a Word of Anger. Cr. 3 Car. B. R. between *Blackbaw and Stephens*, per Cur. Prohibition was granted. Mich. 8 Car. B. R. between *Nates and Glover*, a Prohibition was granted.

15. If a Man says to another, *Thou art the Son of a Whore, and thy Mother was a Bitch, and he sues in the Ecclesiastical Court for this*, a Prohibition lies, because those are but Words of Anger. Mich. 3 Car. between *Lownes and Sir Arnold Herbert*, a Prohibition was granted.

Prohibition was pray'd to the Ecclesiastical Court for calling one *Rogue and Rascal*

and Son of a Whore, because they are only Words of Heat and Passion, and for that Purpose this Case of *Lownes v. Herbert* was cited; But the Prohibition was deny'd per tot. Cur. for the Words import, That his Mother is a Whore and he a Bastard; but in the Case in Rolls, the Words coupled with (*Thy Mother is a Bitch*) makes all the Words inferrible, but here they are an Ecclesiastical Scandal. And in another Suit by the Mother for the same Words, a Prohibition was deny'd, for both the Mother and Son are scandalized by the Words. 3 Lev. 119. Trin. 35 Car. 2. C. B. Vincent v. Alvy. — S. C. cited and approv'd. 11 Mod. 117. Trin. 6 Ann. B. R. in the Case of *Barth. Wolfe*. Where Libel was in the Spiritual Court by the Mother and Son for calling the Son Bastard and his Mother a Whore by Imprecation; And a Prohibition was deny'd.

Prohibition lies for calling one *Whoreson*. Per Richardson; Lat. 156 in the Case of *Lewis v. Whitton* cites Mich. 6 Jac. B. R. Cradock v. Thomas.

A Libel &c. for these Words, *Thou art the Son of a Whore, and thy Mother stood in a White Sheet for a Bastard, * or Words to that Effect*. It was moved for a Prohibition, because these are only Words of Heat and Passion. But to that the Court answer'd, That if it had been only for the first Words, (viz.) *Thou art the Son of a Whore*, these would have been only Words of Heat; but here he comes to Particulars, viz. (*Stood in a White Sheet*) Then it was moved, That here it is not a positive Affirmation in the Libel of speaking the Words, but these, or Words to that Effect. But to that the Court answer'd, That this is their usual Form in the Spiritual Court; and so for Time they say, in the Months of January, February &c. all the Months of the Year. But Atkins inclin'd, That that was Naught; but all the rest Contra, and so they would grant no Prohibition. Freem. Rep. 295. pl. 347. Trin. 1678. C. B. Anon. — See (P) pl. 2.

It was said by Holt Ch. J. That if A. calls B. a Son of a Whore, He can't Libel in the Spiritual Court, but his Mother may; because in this Case 'tis no Spiritual Degeneration to the Son, but 'tis to the Mother. 11 Mod. 112, 113. Pasch. 6 Ann. B. R. Hoskins v. Lee.

16. If a Man says to a Woman, *Thou art a Whore and thy Children are Bastards, and for this the Woman sues in Court Christian, no Prohibition lies, for the Statute* *El. of Bastards* *lives* Put where Libel was &c. for saying, Thou

act a Whore and a Bawd saves the Ecclesiastical Jurisdiction. Mich. 3 Car. B. R. between *Wallis and Procter per Cur.* Prohibition was denied.

and a Bawd and *keepest a Bawdy-House*, a Prohibition was granted per tot. Cur. For saying, Thou art a Bawd, and keepest a Bawdy-House is punishable by the Common Law; and for saying, Thou art a *Whore*, without making mention in particular, is not to be punish'd in the Spiritual Court; and a Precedent was shewn. Mich. 3 Jac. 3 *Richols's Case*, That a Prohibition lies for saying, Thou art *Whore*, and a *Tainted Whore*, and a *Dirty Whore*. Jo. 44 Mich. 21 Jac. C. B. *Binch v. Wood*. — So it was held per Cur. That saying thou art a *Whore* and a *Thief*, or thou keepest a Bawdy-House, are Temporal Matters, and the Party shall not proceed in the Spiritual Court; whereas if it were only, *Thou art a Whore*, a *Libel* lies in the Spiritual Court. 2 Salk. 552. pl. 15. Mich. 1 Ann. B. R. *Galizard v. Rigault*.

Libel was for calling a Woman *Impudent Whore*. It was objected, That it was only a Word of Passion, and that later Opinions have been, that unless some Act of Fornication was express'd, a Prohibition should be granted. But it was denied, because Whoredom is an Offence of Spiritual Cognizance. 1 Vent. 7. Hill. 25 & 26 Car. 2. B. R. *Herbert v. Merit*. — Sid. 424 S. C. by Name of *Millet v. Herbert*, says, This Case was ruled upon View of Precedents, which formerly were, that Prohibition should go, but of late that it should not.

A Prohibition was pray'd to stay a Suit for calling a Woman *Whore*, but upon Consideration, after two Arguments at the Bar, and on the Bench, it was deny'd; for it is an Ecclesiastical Slander, and examinable and punishable in the Ecclesiastical Court, and not to be consider'd only as Words of Scolding and Heat. 2 Lev. 63. Trin. 24 Car. 2. B. R. *Betniff v. Pepple*. — S. P. *Freem. Rep.* 43. pl. 51. Trin. 16-2. B. R. *Medliff & Ux. v. Buckold & Ux.* and it seems to be S. C. — S. C. of *Betniff v. Pepple*. Vent. 220. says, It was for Words spoken of the Mistress to her Servant, (viz.) *Go tell thy Mistress Whore, she is a Whore, and I will prove it*. Hale Ch. J. said, That they cannot be Words of Heat, as if spoken when the Parties had been scolding, but were spoken deliberately to the Servant in the Party's Absence; and said, That formerly they would not prohibit unless the Words implied some Act done, as in Case of *Eaton v. Aploffe Cro. C.* 110. but 'tis reasonable this Suit should proceed, it being for Matter of Slander, which is to be punished by publick Penance; so no Prohibition was granted. — But Trin. 16-8. B. R. A Prohibition was granted to a Suit for calling a Woman *Whore*, because only a Word of Heat and Passion. *Freem. Rep.* 296. pl. 54-7. Anon.

Where the Words were *You are a Whore and ply in Moorfields*; The Suggestion for a Prohibition was, That the Words were *spoke in London* where an Action lies for such Words; And a Prohibition was granted for that Reason; For otherwise Suits might have been in the Spiritual Court for such Words, tho' not singly for the Word *Whore*, it being a Common Word of Brawling; But otherwise where joined with other Words, which shew the Intent to defame in that Kind. Vent. 343. Mich. 31 Car. 2. B. R. Anon. But for saying *you are a Common Woman, and such Women, as you are, never have any Children*, the Suggestion for a Prohibition was, that there was a Custom in London to punish Whores by Carting and Whipping &c. and averred, That if any such Words were spoken by him, they were spoken in London &c. a Prohibition was denied per tot. Cur. because this Custom extends only where the Woman is directly called *Whore*, and not to Words from which it may be collected that she is a *Whore*. 2 Lutw. 1039. Hill. 3. W. 3. *Houblin v. Milner*. — So where a Libel was for saying, *Thou art a cuckoldly old Dog, call down the Bitch your Wife* it was suggested here as in the Case above about the Custom of London, whereupon a Prohibition was granted, and it was now moved for a Consultation, upon the Reasons in the abovementioned Case, that the Words must be directly and expressly defamatory, and insisted upon the said Case; But per Cur. That Case hath been denied to be Law by this Court, and it hath been ruled, That any Words, which are defamatory and punishable in the Spiritual Court, are triable in London by the Custom there in an Action on the Case, wherein Damages may be recovered, so in the principal Case the Prohibition was held good, and the Consultation was denied. 8 Mod. 115. Hill. 9 Geo. 1-23. *Horchkiss v. Corbett*. — Upon Suggestion of the Words being actionable in London by the Custom for calling a Woman *Whore*, the Court would not grant a Prohibition, *without Oath made, that if any such Words were spoke, they were spoke in London and not elsewhere*. 4 Mod. 367. 6 W. & M. B. R. Anon.

Libel &c. for these Words *You are a damn'd Bitch Whore, and a Pocky Whore, and if you have not the Itch you have the Pox*; and moved for a Prohibition, because an Action lies at Common Law; and a Difference was taken, where the Word *Pox* could not be intended but of the *French Pox*, by the Words that were spoken with it, there Action lies; and Holt said, That where the Word *Pox* was joined with the Word *Whore*, it should be intended of the *French Pox*, and Prohibition granted. 12. Mod. 242. Mich. 10 W. 3. *Grimes v. Lovel*. — S. P. in the same Term 12 Mod. 248. *Whitfield v. Powel*.

But where Words were, *You are a Brandy-nosed Whore, and you Stink of Brandy*; It was moved for a Prohibition that the Words rather charged Intemperance than Incontinency, but the Prohibition was denied. 2 Salk. 693. Pasch. 4 Annæ B. R. *Acebury v. Barton*. — 11 Mod. 48. pl. 15. S. C.

Libel &c. for these Words S. F. Wife of R. F. is a *Whore*, and her Husband is a *Cuckold*, and that she brought up his Daughter to follow the same Trade, and to be a *Whore* like herself; a Prohibition was moved for, and granted Nisi, but afterwards was discharged. Lutw. 1037. Mich. 5 W. & M. Moore v. Fawceter.

A Libel was for Saying, *She had a Child at S.* a Prohibition was prayed for, but denied, it being a Kind of Fornication. 2 Keb. 335. pl. 62. Hill. 19 & 20 Car. 2. B. R. *Hoddfson v. Brown*.

So for these Words spoken in London (viz.) *Thou hadst a Bastard after thy Husband's Death*. It being after Sentence, Court doubted whether to grant a Prohibition, and yet per Cur. the Plaintiff, notwithstanding the Sentence, may bring an Action in London for the same Words, to which this Sentence cannot be pleaded in Bar; and so the Party be doubly punished for one and the same Thing. Curia advisare vult. Carth. 213 Hill. 3 W. & M. B. R. *Hawkins v. Cook*. — Show 277. S. C. by Name of *Hawkins*.

Rule was to shew Cause why a Prohibition should not go to a Suit &c. for these Words, *She was never married, and never had a Husband* (and what is her hopeful Son) *Innocendo*, That she was a Whore; And upon Debate the Rule was discharged, for the Court was clear in Opinion that these Words were a Spiritual Defamation. Carth. 498 Mich. 11 W. 3 B. R. Pitts v. Smith.

A. said to B. That she made her Husband a Cuckold; B. libelled against A. in the Spiritual Court; and it was moved, that the Words were spoken in London, and that tho' it is not said so in the Declaration, yet it is calling her so by Implication. Per Holt Ch. J. if the Custom of London extends to punish a Woman that makes her Husband a Cuckold, then a Prohibition may be granted; For the Court doth it to grant a Prohibition for calling a Woman Whore in London is, because they by Custom punish Whores there by Carting them, and an Action lies there for calling a Woman Whore; And afterwards at another Day this Term they granted a Prohibition, because these Words are actionable in London. 11 Mod 198 Mich. - Ann B. R. Bennet v. King.

17. If a Man says to another, Thou art a Drunkard, or a drunken Fellow, or an idle drunken Fellow, if a Suit be in the Spiritual Court for this, a Prohibition lies; for this is not Spiritual Slander. Mich. 8 Car. 15. R. * between Starr and Cuckow. Prohibition was granted; For they are Words of Heat and Passion, and not any Spiritual Defamation. D. 15 Car. 15. R. † between Haynes and Pynter, the Words were, Thou art a Drunkard, and drunk Times a Week; Prohibition was granted against the Opinion of Barkley. But after Mich. 15 Car. it was moved again, and per Cur. Prohibition was granted, for the Court said they should not hold Pica of a Defamation, where they have not Original and Direct Cognizance of the Fact whereof he is accused, as they have not of Drunkenness, unless as an Defence against the Ten Commandments, as all Sins are.

ther Court might meddle with Drunkenness, to punish it; so that it is not really Temporal, but he assented to the Grant of a Prohibition, and the Party may, if he will, after Declaration, demand thereunto. And a Prohibition was granted. — Jo. 305. pl. 14. S. C. And Jones said, That when he was Justice in C. B. a Prohibition was awarded for such Words in Martin Colthorpe's Case — S. C. Cro. C. 590 by Name of Starr v. Burchole, a Prohibition was granted, because these Words tend to, and are punishable as a Temporal Offence, and not in the Ecclesiastical Court.

† Jo. 441. Mich. 15 Car. B. R. Swayze's Case seems to be S. C. where the Words were, *Thou art a common Lecher*, and a Prohibition was granted. — Mar. 6. pl. 11. Anon but is S. C. — Ibid 66 pl. 103 S. C. — Per Jones J. If one libels for calling him a Drunkard, a Prohibition does not lie; but otherwise it is for saying, that he was drunk. Richardson said quite if not for another Reason, viz. because the Act is punishable by the Statute. Lat. 155. 156. in Case of Lowen v. Wharton.

Where a Libel was for saying to a Parson, viz. *Thou art a puffed drunken Parson and a drunken Puppy*, a Prohibition was granted, notwithstanding they were spoke of a Parson. 3 Salk. 288. pl. 9. Pasch. 2 Ann. Brown v. Tanner.

18. If a Man says to another, thou art a Cuckoldly Knave, and for this he and his Wife sue in the Spiritual Court for Defamation, no Prohibition lies; because the Words amount to a Spiritual Defamation, to wit, that the Wife was incontinent. Dill. 9 Car. 15. R. between Hes and Colbit, per Curiam, a Prohibition was denied.

calling another Cuckold; for they are Words of Passion, and the speaking of them not punishable there. Sid 248. pl. 14. Pasch 17 Car. 2 Knight v. Jacob. — Keb 190. pl. 53. S. C. Twitten and Keeling J. held clearly that it was grantable; but Hyde and Windham doubted, but ordered Cause to be shewn why it should not be granted.

Defendant was sued in the Spiritual Court for speaking these Words, (viz.) He is a Cuckold and a Whore, which is worse than a Cuckold, and J. S. hath lain with A's Wife; it was alleg'd that the said Words of Spleen Prohibitions have usually been granted; but upon Advise ment the Court all agreed that no Prohibition should be granted; for tho' the first Words are too general, yet being coupled with a particular Charge as to a particular Person, they are now not Words of Spleen or usual Discourtesy, but a Defamation suable in the Spiritual Court. And so a Prohibition was denied. Cro. C. 110. Pasch. 4 Car. C. B. Eaton v. Aylott.

So where the Words were, Thou art a Cuckold, and a cuckoldly Knave, and a cuckoldly Rogue; a Prohibition was moved for; and cited 1 Cro. 110. But it was denied per Curiam, for three Causes: the 1 higher Defamation; because it does not only defame the Husband but also scandal the Wife; for if the Words be true she must necessarily be a Whore; but if the Words had been spoken *ad personam*, as *cuckoldly Knave*, there perhaps it might have been otherwise. Freem Rep 44 pl. 58. Trin. 1672. C. B. Davie v. Dorie — In such a Case Prohibition was granted Nisi Causa Cause was shewn that the Baron and Feme joining in the Suit, no Prohibition should go; Otherwise it is heard alone; for the Words charge her with Incontinency, and so it is reasonable that she should have a Suit in the Spiritual Court to punish the Defamation which subjects her to Penance in the Ecclesiastical Court; but if the Baron had sued alone, a Prohibition should go, because he means to sue in the Temporal Court.

the Speaking of the Words. And of that Opinion was the Court, and discharg'd the Rule for the Prohibition. 2 Lev. 66. Mich. 24 Car. 2. B. R. Tozer & ux. v. Davis — Ibid. says that a Prohibition was denied the next Term in a like Case, between Luchin and Lightbridge. — S. P. Rul'd by Holt Ch. J. 3 Salk. 288. Hill. 13 W. 3. Anon.

So where the Words were, *He is a Cuckold, with an Ascerment that in that Country it signifies that the Wife is a Whore*; and a Prohibition denied. Comb. 312. Hill. 6 W. 3. B. R. Meriel & ux. v. Kendal.

So for calling one *False Knave*; for Knave ab initio was no

19. If a Man says to another, Thou art a Knave, a Paultry Knave, and a Pockey-lac'd Knave, and a Suit is in the Spiritual Court for these Words, a Prohibition lies. D. 11 Car. B. R. between Packer and Moore, a Prohibition was granted.

Name of Reproach, but signified a Man-servant. 2 Inst. 493. says it was the Case of March v. Beale. — So where it was for calling a Man *Knave*, and a *Knave* indeed, because the Words could not make him subject to any Ecclesiastical Censure. 2 Salk. 548. Hill. 8 W. 3. B. R. Hawkins Case.

Note, It was denied by all that the Spiritual Court hath any Jurisdiction to maintain any Suit for calling a Man *Knave*, as Pro Reformatione Morum. Sid. 149. pl. 12. Trin. 15 Car. 2. Anon. — A Prohibition was granted Nisi &c Sid. 393. pl. 26. Mich. 20 Car. 2. B. R. Anon.

S. C. Jo. 320. But there the Words are, That he did keep a Boy to bugger him, and that he did

20. If J. B. says to J. D. It is reported that J. N. did, or does keep in his House a Man or Boy to Bugger, to which J. D. answers, He, Vile Villain, would have done as much to me; If J. B. sues J. D. for this Defamation, averring himself to be a Minister, a Prohibition lies; because this is not any Spiritual Defamation, and Buggery is made Felony by the Statute. Mich. 8 Car. B. R. between Higgon and Coppinger, * a Prohibition being granted before, a Consultation was denied, and after a Demurrer was joined upon the Declaration, and adjudged per Curiam, that the Prohibition is well granted. Intratur. D. 8 Car. Rot. 129. though the Suit in the Spiritual Court was for Words.

* Fol. 297.

bugger him; and a Prohibition was granted by three Justices, absente the Chief Justice.

But where Libel &c. was for these Words, (viz.) Thou art a forsworn Knave, for thou madest

21. If A. sues B. in the Spiritual Court for a Defamation, scilicet, for saying these Words, That A. was false Forsworn before the Judges, in that he swore that J. S. was no Tinner; a Prohibition lies, for an * Action lies at Common Law for these Words if it be well laid. Mich. 8 Car. B. R. between Robinson and Taylor, Prohibition granted per Curiam.

a false Account when thou wast Churchwarden; the Defendant suggested for a Prohibition, that the Disculding of Perjury belonged to the Temporal Courts; but a Consultation was granted, because the Perjury was supposed to be committed about the Execution of his Office of a Churchwarden, which belongs to the Spiritual Jurisdiction. But otherwise had it been suggested to be done concerning a Feoffment, or other temporal Act. Goldsb. 113. pl. 2. Mich. 39 & 40 Eliz. Brown v. Lothar. — * See pl. 3.

22. If A. a Surrogate, sues in the Spiritual Court against B. Ex Officio pro Salute Animæ & morum Reformatione ex Promotione C. because C. being a Proctor of the Spiritual Court, and a Master of Arts, the said B. said to him, Thou art, or He is a Scabbed Knave, and a Pickerel Bum-bailiff; or thus, I scorn to be abused by such a Scabbed Knave, or such a Pickerel Bum-bailiff as thou art; and avers, that he said this is to defame C. and to condemn the Ecclesiastical Jurisdiction, a Prohibition lies; For this is not any Spiritual Slander, nor any Defamation of the Court. Mich. 8 Car. B. R. between Cory and Ward, per Curiam. And a Prohibition being before granted upon this, and a Plea and Demurrer for a Consultation, the Court seem'd now of Opinion, that no Consultation ought to be granted. But before this was determined, Cory died.

Godb. 446. pl. 514. Trin. 8 Car. B. R. S. C. but not so fully

23. If a Suit be in the Spiritual Court Ex Officio pro Reformatione Morum, because J. S. was a Doctor of Divinity, and Parson of Shipling in the County of and J. D. said to J. S. You were twice overthrown by the Parishioners of Shipling. J. D. replied,

plied, He lied, It was but Once ; whereupon J. D. replied, He lied, and that he was as good a Man as J. S. for that he was but a Blacksmith's Son, or the Son of a Blacksmith, a Prohibition lies ; for here is not any Spiritual Slander, and but a returning the Lie upon the Doctor who gave it first. Mich. 8 Car. B. R. between *Hyce and Doctor Wells*. Per Curiam, except Richardson, a Prohibition before granted, and now Demurrer for a Consultation, the Prohibition shall stand. Mich. 9 Car. this being moved again, per Curiam it seems that the Prohibition shall stand.

It was moved for a Prohibition, because they are only Words of Heat and Scolding ; and cited a Roll. 296. No. 19 297. No. 22. 23. And if he had said he had been a Common Liar, it had been Cause of Depri- vation. And Per Ellis, then certainly it had been good Cause to sue in the Spiritual Court ; Per Atkins, He is a Liar if he tell but one Lie, and why should we intend it in the worst Sense of a Common Liar ; so that the Question is, How it shall be intended ? Vaughan said, That Case in Roll. 297. charges him with one particular Act only, viz. of lying upon the Subject Matter. Sed adjournatur. Freem. Rep. 80, 81. pl 100 Pasch 1673 *Gloyne v. Gilbert*.

24. If A. B. a Feme, says of J. S. a Minister, He is a worthy Preacher, he preaches against Pride, and brings a Trullerud to Church with him, (innuendo his Wife) my Husband will not suffer me to be abused by such a Knave ; this is a Spiritual Defamation, for which, if a Suit be in the Spiritual Court, no Prohibition shall be granted. D. 11 Car. B. R. between *Vaughan and Dantsey*, per Curiam Prohibition denied.

for a Prohibition, because the Words are actionable at Law, and it was granted, but afterwards a Con- sultation was granted, because they concern an Ecclesiastical Matter and Person, and are fit to be tried there. 3 Lev 17. Pasch 33 Car. 2. C. B. *Crandon v. Walden*.—But where the Words in the Li- bel were laid to be, That the said Price (a Parson) *behav'd himself proudly and insolently, and that he was an impudent ignorant Blockhead ; and that he also said and declared, That the Advice and Exhortations, and other Spiritual Directions of him the said Price from the Pulpit, are not fit to be taken, and that he was not fit to give the Sacrament ; and that he the said Clerk, speaking to a Third Person said, Thou wouldst not receive the Sacrament from such a Puppy as the said Price was, was y^e u to live never so long in his Parish.* To prevent a Prohibition it was urg'd, That these were not Words of Heat but of Deliberation, and highly touch'd him in his Function ; and cited the Case of *Crandon and Walden* 3 Lev 17. But Holt Ch. J. said, (to which the Court did not disagree) That tho' these Words did reflect on him in his Profession, yet being they do not charge him with any Thing for which he is amenable to the Spiritual Court, therefore a Prohibition was granted, and it was ordered to come before the Court of B. R. by Declaration and De- murrer. 11 Mod. 140. Mich. 6 Ann. B. R. *Clerk v. Price*—Afterwards in Hill. 7 Ann. This Cause came on again, but adjournatur—*Ibid*. 208. S. C. but no Judgment.

25. If A. a Woman, sues B. in the Spiritual Court, for say- ing of her, Thou art a Welch Jade, averring in the Libel, that the said Words signify as much as if he said of her that she was a Whore, no Prohibition shall be granted ; for this is a Spiritual Detama- tion. D. 11 Car. B. R. a Consultation granted, after a Prohibi- tion before granted, upon shewing of a Libel for saying, Thou art a *Thief, and a Welch Jade, but now the Doctor comes into Court, and certifies the Court, that the Word Thief was not in the Re- cord in the Spiritual Court, and upon this a Consultation was granted, between *Jefferies and Pue*, per Curiam.

Jade, and a sinking Jade ; and suggested in the Libel that Jade signified Whore. A Prohibition was denied per tot. Cur. because the Words are malicious. 2 Show 487 488 pl 453 Mich 2 Jac. 2. B. R. *Warwick v. Skinner & al*—But the Reporter adds, Sed quere vim Rationis ; for an Averment seems necessary. And says that Mr. Powell (the Counsel that mov'd for the Prohibition) inform'd him that the next Day they had a Prohibition granted in C. B.

* Where the Words are complicated, so that Action will lie for Part in the Temporal Court, Prohibi- tion will go for all ; as if it had been for saying, Thou art a Whore and a Thief, the Suit in the Spiritu- al Court shall not be stay'd for the Word Thief only but for the whole. Per Twissden J. Sid. 424, in the Case of *Mellet v. Herbert*.

26. 9 F. 2. cap. 4. Enacts, that in Defamations the Prelates may cer- rest network hindring the King's Prohibition. See 2 Inst 250.

27. A Man may sue in the Spiritual Court for calling him *Falsifier, Slanderer, or Usurer &c.* F. N. B. 51. (1)

28. If a Man give Evidence to an Inquest to indict one, he cannot sue for this Defamation in Court Christian. 2 Inst. 493.

29. If a Man call one a *Perjured Man*, he must take his Remedy at the Common Law. 2 Inst. 493.

The Defendant sued the Plaintiff in the Spiritual Court for saying he was the Father of a Bastard-child. The Plaintiff says he spoke the Words at the Sessions, where the Defendant was adjudged to be the Father, and to maintain the Child. The Defendant says he spoke them out of Sessions. And the Plaintiff demurs, and had the Prohibition, per Curiam; for by the Statute of the Sessions are made Judges of the Fathers of Bastard-children; and therefore they shall not try it over again in the Spiritual Court; for he is legally convicted; and it is like as if a Man be convicted of Perjury, any Man may call him Perjur'd, and justify. Freem. Rep. 283. pl. 325. Trin. 1673. in B. R. Thornton v. Pickering.

; Lev. 18.

Pasch. 33.

Car. 2. C. B.

S. C. by

Name of

Yates v.

Lodge, but

reports them

as spoken of

a Parson, and

says the

Prohibition was denied, for the Words are very scandalous, being spoken of a Parson, tho' not actionable at Common Law.

31. The Plaintiff spoke of the Defendant these Words: A. is a *Lying Fellow*, and has lain with all the Women between H. and B. and lies with so many Women, that he scarce lies with his Wife. The Plaintiff was sued for these Words in the Ecclesiastical Court. A Prohibition was prayed, because these Words import a Thing impossible, and are too general. But denied per Curiam, because they import him to be an Adulterer; and this is a Matter properly in the Conuance of the Ecclesiastical Court. Freem. Rep. 300. pl. 362. Trin. 1681. C. B. Lodge v. Yates.

32. I will not venture myself with her, (being spoke of a *Midwife licensed*) she is a *Whore*, and will kill me, and bury me in the Garden, as she did her Bastard; for which Words a Suit was in the Ecclesiastical Court, and Prohibition prayed, and upon Cause shewn denied; the Court taking them not to be actionable at Common Law. Skin. 86. Hill. 35 Car. 2. B. R. Anon.

33. A Libel was for these Words, viz. She is a *Bitch*, a *Whore*, and an *Old Bawd*. A Prohibition was prayed, because some of the Words are actionable at Law, and some punishable in the Spiritual Court, and so prayed a Prohibition Quoad those Words that are Actionable at Law; and it was granted, because the Words were an Intire Sentence, and spoken altogether; and if a Prohibition should not be granted, the Plaintiff might be doubly vexed. 3 Mod. 74. Mich. 1 Jac. 2. B. R. Anon.

34. A Libel was for saying, *You are a Rogue and a Rascal, and have hired Fellows to swear false*. It was suggested for a Prohibition, That though the Words should not be deemed Words of Heat &c. but advised and malicious, then they import an Offence against a Statute Law, and, That where no Suit lies for the Principal in that Court, no Libel can be there for Defamation in the charging such Offence. And a Prohibition was granted. 2 Show. 454. pl. 417. Mich. 1 Jac. 2. B. R. Venners v. Allen.

35. Prohibition was granted to the Spiritual Court upon a Libel, for calling him *Rogue and Rascal*, and saying, that he kept a *Whore in his House*, and thereupon the Plaintiff there had Sentence. The Defendant appealed to the Archives, where the Sentence was affirmed and remanded, and then appealed to the Delegates, and was thence remanded for Non-Prosecution there. Upon a Motion to discharge the Prohibition it was insisted, That the Words were only of Heat and Scolding, and to say that the Plaintiff kept a *Whore in his House*, shall not be

be understood that he knew her not to be so, but that he kept her as a Whore, especially being after Sentence, and of that Opinion was the Court, and granted a Consultation. 3 Lev. 350. Pasch. 5 W. & M. C. B. Elliot v. Chamberlain.

36. A Libel was for these Words, *You are a Rogue, Rascal, Whore-Master, and Son of a Perjured Affiave Bitch.* A Prohibition being moved for, all the Words were waived but that of Whore-Master; and it was urged, That this was only a Word of Heat. But per Holt Ch. J. To say so of a Man is the same as calling a Woman Whore, which is an Ecclesiastical Slander; That to call a Man *Cuckold* was not an Ecclesiastical Slander, but *Wittal* was, for that imports his Knowledge and Consent to the Adultery of his Wife; but to call a Man *Impudent* *Brazen-faced* *Belschub* were Words of Passion, and import no Crime nor Discredit any more than *Devil*, or *Prince of Darkness*. 2 Salk. 692. Mich. 5 W. & M. B. R. Smith v. Wood.

S. C. Com. 226. Dolben said, That a Prohibition had often been denied for calling one Whore, and there was the like Reason for Whore-master; and cited 1 Cro.

110. Sid. 248. And 1 Cro. 332. But Eyre J. said that that Case had been since exploded — S. C. Skin. 390. And that the Prohibition was denied per tot. Cur. and they said they would not encourage defamatory Words.

37. Libel was for these Words spoken of a Parson, *he has no Sense, he is a Dunc and a Blockhead, and he wondered the Bishop would lay his Hands on such a Fellow,* and that he deserved to have his Gown pulled over his Ears. A Prohibition was granted; for a Parson is not punishable in the Spiritual Court for being a Blockhead more than another Man; and it being urg'd, that he might be deprived for want of Learning, Holt Ch. J. said, if that be his Case, he must bring his Action at Law, because Deprivation is a Temporal Damage. And a Prohibition was granted. 2 Salk. 692. pl. 3. Hill. 10 W. 3. B. R. Coxeter v. Parsons.

S. C. 12 M. d. 231. accordingly.

38. A Motion was made for a Prohibition to the Spiritual Court, upon a Libel there for these Words, *He is a great Rogue, As great a Rogue as ever was hanged, and deserves to be hanged more than Dr. Pimis;* a Prohibition was granted, because no Spiritual Defamation. 11 Mod. 112. Pasch. 6 Ann. B. R. Hoskins v. Lee.

(O) Where the *Spiritual and Common Law differ.* If the Suit be according to the Spiritual Law, a Prohibition shall be granted. *In the Matter.*

Fol. 298.

1. If a Man buys Wood, and expends it in his House, though the vendee may be sued for Tythes of it by the Spiritual Law at the Election of the Parson, yet since he ought not by the Common Law, because he expends it in his House, a Prohibition shall be granted, as was granted 19. 14 Ja. 3. between Parson *Ellis* and *Drake*.

See Dimes (L)

2. So if a Lessee of Pasture rendering Rent be sued for Tythes of the Rent and not in Kind, a Prohibition lies, because it is against the Common Law; For he ought to sue for Tythes in Kind, as was adjudged, 14 Ja. *Ellis* and *Drake* before.

See Dimes (S) (T) pl. 1. S. C.

3. If A. gives a Legacy to B. and makes C. his Executor, and dies, and after C. dies Intestate, and D. takes Letters of Administration of the Goods of C. and after B. sues D. as Administrator of C. for this Legacy, supposing C. when he was Executor, to have waived the Goods of A. a Prohibition lies; because by the Common Law this was a Personal Tort for which the Administrator cannot be charged. 12. 11. Car. 3. R. between *Ament* and *Fotherby* by 2 Justices against one.

But since this Case a Administrator of rightfull Executors &c. have been made chargeable by Statutes.

for which see Denham.

4. Where a Man grants the Tenth Part over and above the Tithes, which he ought to pay to the Church, there, of this the Lay Court shall have Jurisdiction. Br. Difines &c. pl. 1. cites 44 E. 3. 5.

5. The Defendant in a *Quare Impedit* (pending the Suit in B. R.) libelled against S. one of the Parishioners of the Church in Question for Tithes, and De Jure Rectoriæ, alleging, That he is Verus & Indubitatus Rector &c. S. pleaded there, That G. was not Parson, but that M. was; which Plea they refused, and gave Sentence against S. and S. pray'd a Prohibition, for that it appears to the Court of B. R. by a Verdict given here, That M. and not G. is the true Parson. Coke Ch. J. thought a Prohibition should be granted; for should G. have the Tithes, M. might also charge S. and so S. would be twice charg'd; and it appears to the Court, That M. is the true Parson, and yet they of the Spiritual Court will certainly sentence G. to be the true Parson, because they look upon M's Institution to be void by reason of a Caveat enter'd, in which Respect our Law and theirs differ Ex Opposito; for the Libel is, That G. is Verus & Indubitatus Rector, and that the Suit is De Jure & Titulo Rectoriæ, whereas Parson or Not Parson is triable by the Common Law; quod fuit concessum Per Doderidge, who said, That Parson or Not Parson comprehends Induction; which Coke granted, and a Prohibition was granted. 1 Roll. Rep. 228. pl. 36. Trin. 13 Jac. B. R. Glover v. Shedd.

6. It was agreed per Cur. That Real Compositions for Endowment of Vicarages shall be expounded by the Judges of the Common Law, and therefore if the Spiritual Court meddles with it a Prohibition lies. Litt. Rep. 263. Pasch. 5 Car. C. B. Case of Vicarages.

Gill v. William. Keb. 845. pl. 39. Adjournatur. But Ibid. 877. 878. pl. 29. Prohibition was denied; And per Hyde, In Suit for a Legacy against Administrator of Executor on Devise by the first Testator, if by their Law Administrator to Executor be so to the first Testator, they have at worst proceeded Inverso Ordine, in which Case it is proper to appeal.

7. A. made 2 Executors B. and C. and died; B. made J. N. his Executor and died; C. died intestate, A. Legatee of A. su'd J. N. in the Spiritual Court for his Legacy, who pleaded this Matter, but they there refused the Plea; whereupon he pray'd a Prohibition, but it was deny'd, because the Matter is Testamentary; and perhaps J. N. has all the Goods in his Hands, and is Executor De son tort, and that there is no body else in this Case to be su'd to recover the Legacy from; And tho' the Survivor by our Law shall have all, it is not so perhaps in their Law, to which this Matter belongs; And if they proceed ill he ought to appeal, but this Court will not prohibit them; and a Prohibition was denied. Lev. 164. Pasch. 17 Car. 2. B. R. Guillan v. Gill.

8. When a Question arises concerning the Jurisdiction of the Spiritual Court, as whether they ought to have the Probate of such a Will? whether such a Disposition of a Personal Estate be a Will or not? whether such a Will ought to be proved before a Peculiar or before the Ordinary? whether by the Archbishop of one Province or another, or both? and what shall be bona Notabilia? In these or the like Cases the Common Law retains the Jurisdiction of Determining. Per North Ch. J. 1 Mod. 211. pl. 44. Pasch. 28 Car. 2. in C. B. Anon.

(P) Where the Temporal and Spiritual Law differ in the Manner of the Suit.

Roll. Rep. 426. pl. 19. Mich. 14 Jac. S. C. See (Q) pl. 10.—By the Rules of the

1. If Baron and Feme are divorced Causa Adulterii, and after the Feme sues alone without the Baron for a Defamation; tho' the Divorce does not dissolve the Marriage, yet because the Feme may by the Course of the Spiritual Law sue alone in such Case, No Prohibition shall be granted, tho' it be contrary to the usage of our Law. My Reports. Motam and Motam adjudged.

Spiritual Court a Feme Covert may sue alone in every one of the following Cases, viz. When she is *Executor or Administrator, or Legatee or Legatary, or Defaming or Detained.* Per Dr. Pinfold. 15 Mod. 64 Mich. 10 Ann. B. R. in Case of D'aeth v. Baux.

2. If a Man libels in Ecclesiastical Court for saying of certain Words (naming them) Aut in Effectu Contumelia; Tho' such Declaration be not good at the Common Law. yet such Libel is good by Usage there, and therefore no Prohibition shall be granted. Hill. 11 Ja. B. R. * Palmer's Case. S. P. And held good by all the Court, except Atkins, who inclin'd that it was

naught; but the others held it good, because it is their usual Form. Freem. Rep. 295. pl. 347. Trin. 1678. C. B. Anon — * S. C. cited Arg. Show. 159. in Case of Shatter v. Friend.

3. If a Feme Covert be sued in the Spiritual Court for Scolding in the Church-yard, and condemned, and Costs taxed, the Baron not being Party to any thing thereof, yet because it is the Custom of the Spiritual Court, no Prohibition shall be granted. Hill. 14. B. R. Bennet's Case. Prohibition denied.

4. If a Man be sued in the High Commission Court Ad Instantiam Partis for Incest, and there it appears that there was a Fact committed, and a Fame and one witness that the Defendant was guilty thereof, yet because there were not 2 Witnesses he was put to his Purgation, because there a Man cannot be condemned by one Witness, and he purged himself accordingly, and yet there they gave Costs to the Party who prosecuted this Suit, according to their Usage there in such Cases no Prohibition shall be granted; For tho' he escapes the Censure of the Court by the Strictness of their Law for Want of a Witness, yet for the Presumption that he is Guilty, they may well give Costs according to their Law. Id. 11. Ja. B. R. Courtoll's Case resolved. S. C. cited Arg. Show. 159. in Case of Catter v. Friend.

[5] 8. upon a Suit * in the Ecclesiastical Court Ad Instantiam Partis, if the Defendant pleads the King's Pardon, and after Costs are taxed for the Plaintiff, because the Pardon is in Manner a Confession of the Fact, tho' this be their Custom there, yet a Prohibition shall be granted, for in as much as the Matter and Suit is pardoned, the Costs also are gone. Id. 11. Ja. B. R. Watson's resolved.

[6] 9. If a Baron and Feme are sued in the Ecclesiastical Court for Polygamy, and there it appears that the Feme was married before to J. S. within the Age of Consent, and after disagreed at the Age of Consent, and married the Defendant, and so the Court acquitted the Defendants, yet if they tax Costs to the Plaintiff, no Prohibition shall be granted, in as much as they have Jurisdiction of the Cause, and it is their Usage to tax Costs, where the Plaintiff had Causam Litigandi. Mich. 8. Ja. B. Blackdon's Case. Prohibition denied. S. C. 2 Brownl. 36. says, That a Prohibition was granted; for that it was Injustice to allow Costs to one that had vex'd

him without Cause, and when they had given Sentence against the Lamer.

[7] 10. If a Parson sues upon the Statute of 2 E. 6. in the Spiritual Court for the Double Value for not setting forth of Tithes, and the Defendant surmises that he set them forth, and that they would not admit the Proof of it there by one Witness. No Prohibition lies, because they have Conscience of the Matter. Hill. 9 Car. B. R. between Dale and Sir Edward Pount. Per Curiam. Prohibition denied. 2 Watf. Comp Inc. 8vo 1122. cap. 57. cites S. C.

[8] 11. If the Parishioners sue the Churchwardens of the Parish to make an Account in the Ecclesiastical Court, and in this Suit Costs of Suit are taxed for the Parishioners against the Churchwardens, and after the Churchwardens pay the Costs to one of the Parishioners, and thereupon he, who receives it, gives a Release to the Churchwardens of the Costs, and this Release is afterwards pleaded by the Churchwardens against the other Parishioners in the Ecclesiastical Court, and is disallowed there, yet no Prohibition shall be granted, because they having Conscience of the Original (to wit) of the Costs they shall have Conscience also, what shall be a sufficient Payment of them. Mich. 15 Car. Mar. 73. seems to be S. C. — The Churchwardens of a Parish, at the End of their Year send the Parishioners to the Spiritual Court to hear their

Accounts paid and audited The Parishioners appeared, and objected to Part of the Account, which after some Variation the Judge allowed, and ordered the *Parish* to pay 6*s* 1*d* Costs of Suit. The Parish appeal'd from this Sentence to the Court of Arches, and pending the Appeal mov'd for a Prohibition; And it was argued, 'That tho' the Ordinary at the Instance of the Parishioners *may cite* Churchwardens to bring in their Accounts, as being Officers amenable to him, yet he *cannot take the Accounts* between them, as he has done here, at the Peril of Costs to the Parishioners; but the Parish must settle it among themselves, or at a Vestry; and that it had been so determined several Times. And of this Opinion was the Court. And held that where it appears upon the Face of the Proceedings that the Court had no Jurisdiction, a Prohibition may be granted after Sentence. And accordingly a Prohibition was granted. Trin. 13 & 14 Geo. 2. B. R. Adams v. Rudge.

9. *Trespass of 2 Loads of Underwood taken in D. the Defendant said, That the Plaintiff is Parson of D. and he is Vicar there, and the Underwoods were Tithes severed from the 9 Parts, and that the Vicars have had it Time out of Mind, and that the Plaintiff came and claimed them as Parcel of his Tithes, and the Defendant took them as his Tithes, which is the same Trespass, Judgment &c.* And because it was after *Imparance* the Defendant could not plead to the Jurisdiction as he might at first, because it is between Parson and Vicar, and yet because it appeared to the Court that it is between Parson and Vicar, and the Lay Court uses one Manner of Prescription and Spiritual Court another, therefore the Court *Ex Officio ousted them* of Jurisdiction by Award; quod nota. Br. Jurisdiction, pl. 79. cites 22 E. 4. 23.

10. One libelled in the Spiritual Court for Tithes, and died, and his Executors revived the Suit. Doderidge J. said, That the Suit being lawfully commenced shall continue; For by the Civil Law the Death of the Plaintiff or Defendant is not any Abatement of the Libel; But they have a Reviver, as the Common Law has a Resumption in Revivment of Ward, and where a Court is once lawfully possessed of a Cause, and has Jurisdiction, it would be hard to grant a Prohibition, and Prohibition was denied. per tot. Cur. Cro. J. 483. pl. 20. Pasch. 16 Jac. B. R. The Bishop of Carlisle's Case.

11. A Prohibition was prayed to stay a Suit against J. S. Lessee of a Rectory, out of which a Pension was demanded. It was suggested, That the Lord Biron had 3 Parts in 4 of this Rectory, upon which the Pension was chargeable, and that the Suit against one alone ought not to be, as in an Assise for Rent-charge all the Tertenants are to be named, and here the Party has an Election to sue a Writ of Annuity, and if so, he must have named all that had been chargeable. Per Cur. 'Tis true, in our Law it were a good Plea in Abatement, but perhaps their Law and Course is otherwise, and here they have Jurisdiction, and may proceed according to their own Rules, or if not, you may have an Appeal; whereupon a Prohibition was denied. Vent. 335. Pasch. 31 Car. 2. B. R. Anon.

12. M. being prosecuted in the Spiritual Court by a Proctor for his Fees in a Suit brought by the said M. against her then Husband Young to be divorce'd, prays a Prohibition; suggesting, That she was Feme Covert, and as such not liable to be sued singly to pay the Fees. Per Parker Ch. J. If the Spiritual Court has the Jurisdiction, perhaps it is not necessary by the Forms of their Law, for the Husband to be named in the Suit, as in the Case of an Executrix. And the Reason of the Difference between the Common Law and the Civil Law is this, That in the Spiritual Court the Husband, tho' not named, may come in Pro Interesse suo, and make Defence himself, should the Wife desert the Cause. 10 Mod. 261 & 264. Mich. 1 Geo. 1. B. R. Clerk v. Lee.

13. Where a Prohibition is granted *Pro Defectu Triationis* it is upon Supposition of different Rules established by the Spiritual and Common Law, as in Case of Prescription. Per Cur. 10 Mod. 272. Mich. 1 Geo. 1. B. R. in the Case of Cottingham and Lofts.

